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European Community internal market technical legislation – a  
critical review of the processes in the context of the free  
movement of goods

A thesis submitted to Middlesex University  
in partial fulfilment of the requirements for the degree of  
Doctor of Philosophy

Terence Charles Rogers

Business School

Middlesex University

September 2004

## ABSTRACT

This research project was initiated in response to concerns held by the author on aspects of the European Community (EC) internal market. These concerns applied particularly to what was understood at the time to be the perceptions of EC internal market practitioners; their perceptions on the process of EC internal market technical legislative change and on how well the EC internal market was functioning.

A literature review was undertaken to determine if, and if so where, the EC internal market technical legislative change process was defined and to determine which organisations were the important players in the process. The literature review was then extended to determine more about the players in the process and the information exchanges between the defined process and individuals, such as EC internal market practitioners, having a legitimate interest in the process. Also within the literature review the views of other commentators are noted and assessed.

A methodological review was undertaken. This review gave rise to the formulation of a structured interview that was applied to a purposive sample of EC internal market practitioners. Two main areas were examined via the structured interview. The first was the knowledge of the overall EC internal market technical legislative change process and of its main players. The second area was the perception of the completeness of the functioning of the EC internal market possessed by EC internal market practitioners.

This research concludes that there are a number of flaws in the treaty establishing the European Community; this is the treaty that includes the high level description of the EC internal market technical legislative process. One of these flaws particularly affects the EC internal market technical legislative process. The research also concludes that the application of the treaty is not consistent and that the knowledge of the EC internal market technical legislative process exhibited by EC internal market practitioners is poor. Based on the conclusions a number of recommendations are made.



## Acknowledgements

The path to a PhD for a distant, part time student is, in my experience, not the easiest of paths to follow. The academic difficulties were overcome with guidance from my Director of Studies, Professor Abby Ghobadian, and my Second Supervisor, Penny Kent – each of their contributions to my progress is acknowledged.

Also of great importance has been the forbearance and support from my family, in particular my partner Cheryl Thompson. On a number of occasions I needed to be rescued from my information technology follies, here my special thanks for his skills and patience to Mark Rogers.

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Terry Rogers  
June 2004

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## Definitions

EC internal market technical legislation is a sub-set of EC secondary legislation in the form of directives.

EC internal market technical legislative process may either create legislation for an area previously without legislation or may amend existing legislation

EC secondary legislation is legislation adopted through the application of any of the appropriate processes included in the EU primary legislation.

EU primary legislation is taken to be the treaties.

Internal market practitioner - a person who deals with one or more aspects of the EC internal market on a daily basis. They may work, for example, as enforcement officials, legislators, or in manufacturing industry and may possess backgrounds that include engineering, law and science. EU officials, or Member State government officials acting in an EU capacity, are not included within this definition.

Process - *A process consists of a sequence of steps which transforms information from an initial state (input) to a final state (output).*

Born G, 1994, Process Management to Quality Improvement, Wiley

Rapporteur – within each of the European Parliament and the Economic and Social Committee much of the work is done within committees. *A Rapporteur is the member of a committee who is responsible for drawing up a report on a matter referred to that committee or examined by that committee on its own initiative.*

Bainbridge T, 1998, The Penguin Companion to EUROPEAN UNION, Second Edition, Penguin, London

User group (Groups of users) – this is a group of ‘users of EC internal market technical legislation’ each with similar interests in the legislation, e.g. manufacturers

User of EC internal market technical legislation – manufacturers, certification organisations, Member State legislators and enforcement officials are, within the context of this thesis, each a user of legislation.



## Abbreviations

BSI	British Standards Institution
CECOD	European petrol pump manufacturers' association
CECIP	European weighing equipment manufacturers' association
CEN	European standardisation organisation – non-electrical
CENELEC	European standardisation organisation – electrical
DDA	Disability Discrimination Act
DTI	Department of Trade and Industry
EC	European Community
EEC	European Economic Community
ECJ	European Court of Justice
EDC	European Documentation Centre
EFTA	European Free Trade Area
EIC	European Information Centre
EP	European Parliament
ESC	Economic and Social Committee
ETSI	European Telecommunications Standards Institute
EU	European Union
FEF	Forecourt Equipment Federation
MCD	Machinery Directive
MEP	Member of European Parliament
MID	Measuring Instruments Directive
NWML	National Weights and Measures Laboratory
OJ	Official Journal
OJEC	Official Journal of the European Community
OJEU	Official Journal of the European Union
PPMA	Petrol Pump Manufacturers Association
SEA	Single European Act
SLIM	Simpler Legislation for the Internal Market
STRD	Standards and Technical Regulations Directorate
TEU	Treaty on European Union
VOC	Volatile Organic Compounds
WELMEC	Western European cooperation on legal metrology

## Chapter 1 Introduction

### 1.1 Background

Most manufactured products legitimately on sale within the European Community (EC)<sup>1</sup> are subject to provisions of pervasive EC internal market technical legislation<sup>2</sup>. Responsible manufacturers of products that are subject to EC internal market technical legislation have therefore, as a business imperative, a requirement for their products to comply with the appropriate technical legislation. To ensure that products can be manufactured in compliance with the appropriate technical legislation the technical legislation must be known. However, the technical legislative environment applicable to products for sale within the EC is subject to continual change. An example of such continual change is available from even a cursory review of the history of changes to the machinery directive (MCD)<sup>3</sup>. There have been three amendments to the MCD<sup>4,5,6</sup>. Subsequent to the issue of these amendments the MCD text has been consolidated and re-issued<sup>7</sup> in a form that repeals the original text as amended.

The existence of the sequence of change illustrated above demonstrates that responsible manufacturers of products have a requirement to track the EC internal market technical legislative process to ensure that their knowledge of internal market technical legislation remains current. Knowledge of current internal market technical legislation is essential but, by itself, is not sufficient to ensure survival in the market place. Information is needed by manufacturers to warn them of, and provide them with details about, likely future and actual changes to the EC internal market technical legislative environment.

<sup>1</sup> The reader is referred to the list of Abbreviations on page xii for abbreviations used throughout this text

<sup>2</sup> The reader is referred to the list of Definitions on page x

<sup>3</sup> Council directive of 14 June 1989 on the approximation of the laws of the Member States relating to machinery (89/392/EEC), OJ 1989 L 183/9-32

<sup>4</sup> Council directive of 20 June 1991 amending directive 89/392/EEC on the approximation to the laws of the Member States relating to machinery (91/368/EEC), OJ 1991 L198/16-32

<sup>5</sup> Council directive 93/44/EEC of 14 June 1993 amending directive 89/392/EEC on the approximation to the laws of the Member States relating to machinery, OJ 1993 L 175/12-20

<sup>6</sup> Council directive 93/68/EEC of 22 July 1993 amending Directives 87/404/EEC (simple pressure vessels), 88/378/EEC (safety of toys), 89/106/EEC (construction products), 89/336/EEC (electromagnetic compatibility), 89/392/EEC (machinery), 89/686/EEC (personal protective equipment), 90/384/EEC (non-automatic weighing instruments), 90/385/EEC (active implantable medicinal devices), 90/396/EEC (appliances burning gaseous fuels), 91/263/EEC (telecommunications terminal equipment), 92/42/EEC (new hot-water boilers fired with liquid or gaseous fuels), and 73/23/EEC (electrical equipment designed for use within certain voltage limits), OJ 1993 L 220/1-22

<sup>7</sup> Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery [Machinery directive], OJ 1998 L 207/1-46

Failure of access to, or failure to act upon, such information may mean that from time to time any given manufacturer's products become unsaleable within the EC as a result of non-compliance with new internal market technical legislation.

The research reported here investigates the processes whereby European Community internal market technical legislation is created. This may be in an area previously without EC legislation or it may be updating existing EC internal market legislation. It is worthwhile to include here a brief clarification of the terminology frequently encountered with regard to Europe. The two references most frequently encountered are European Union (EU) and European Community (EC). The European Union came into being following the ratification, by all of the then Member States of the European Economic Communities, of the Treaty on European Union<sup>8</sup>. The Treaty on European Union reflected a closer integration of the Member States and established a basis for cooperation in areas beyond that of the initial aim of creating a common market. For the purposes of this research it is sufficient to recognise that what was the European Economic Communities became the European Community within the European Union. The European Community is often referred to as the first pillar (Craig and de Burca, 1998)(Roney, 1998) of the European Union. The second pillar of the European Union is concerned with Common Foreign and Security Policy, the third pillar relates to Justice and Home Affairs. Within this research no further significant references are made to the second and third pillars of the European Union.

## 1.2 Research problem

The internal market of the European Community is defined in Article 14 (2) of the Consolidated Version of the Treaty Establishing the European Community<sup>9</sup>. For ease of reference the text of this paragraph of Article 14 is reproduced below:

*'2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.'*

---

<sup>8</sup> Treaty on European Union [Maastricht Treaty], OJ 1992 C 191/1-67

<sup>9</sup> Consolidated Version of the Treaty Establishing the European Community, OJ 2002 C 325/33-184

It is to be expected, therefore, that a *corpus* of European Community legislation exists to regulate each of the four sectors of the internal market. The research reported here has been restricted to deal only with the 'free movement of goods' sector of the EC internal market. Within this work references to the EC internal market, unless explicitly noted otherwise, are to be taken to be restricted to the free movement of goods sector of the EC internal market. The researcher is an internal market practitioner, without legal training, initially trained as a scientist and with a professional background developed while working within several sectors of manufacturing industry. This research was embarked on as a response to the difficulties experienced in trying to follow what appeared to be an *ad hoc* EC internal market legislative process. It has enabled a description, and critical review, of the EC internal market legislative process from the perspective of an internal market practitioner. This description enhances the ability to manage engagement with the process. This thesis is not, and should not be construed as, a legal analysis of the EC internal market legislative process although references are made to legal documents. Notwithstanding the above caveat concerning legal analysis this thesis must be viewed as multidisciplinary in nature as it is concerned with managing engagement with a process described in legal documents, the treaties. It is also recognised that each of the treaties may represent political compromise accepted by the Member States to enable progress in the development of the European Union by broad consensus. An important issue related to the research reported here, but not the primary target of this research, is the quality of the EC internal market technical legislation – the process output.

### 1.2.1 THEORETICAL PROBLEM

Manufacturers of products are only one user group<sup>10</sup> within the set of user groups of EC internal market technical legislation. Others within the set of user groups of EC internal market technical legislation are Member State legislators and Member State enforcement agency officials. Some of these enforcement agency officials are central government officials and some are local or regional government officials. For the United Kingdom there is no single document providing guidance as to which of the hierarchical levels within government will enforce legislation. An example that serves to demonstrate the uncertainties associated with enforcement regimes is provided by 'The Equipment and Protective Systems Intended for Use in Potentially Explosive

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<sup>10</sup> The reader is referred to the list of Definitions on page x

Atmospheres Regulations 1996'<sup>11</sup> which state: *'it shall be the duty of the [Health and Safety] Executive to make adequate arrangements for the enforcement of these Regulations ...'*. In practice this translates into the Health and Safety Executive, central government, acting as the enforcement agency for large installations such as oil refineries and local government officers acting on petrol filling stations.

Each of the three groups of users of EC internal market technical legislation identified above is likely to have at least some similar needs with regard to the processes of change away from the existing EC internal market technical legislation. These needs may be broadly summarised as follows:-

- 1 To be aware of proposals for EC internal market legislation as the preliminary discussions and drafting are taking place.
- 2 To be able to monitor the progress of proposals from their inception through to either their adoption as the new regime of EC internal market technical legislation, or their rejection.
- 3 To be able to take an active role with a view of ensuring that the proposals meet the needs of all groups of users as the proposals progress on their way through to either their adoption as the new regime of EC internal market technical legislation, or their rejection.

The ability to monitor, and if adjudged appropriate to respond actively to, proposals for change to the existing EC internal market technical legislation is dependent on a knowledge of the elements of the process steps that are to be followed as the initial proposals either become new EC internal market technical legislation or the proposals are at some stage rejected. Here 'respond actively to' means the presenting of submissions to the relevant EC institutions, and possibly elsewhere, in an attempt to modify the proposals for change.

The initial part of the research was concerned with a literature survey and review. The literature of interest being European Union primary legislation, EC secondary legislation, other source documents defining processes within, between and beyond the EU institutions, some case law on the application of internal market legislation and reviews by commentators. Details of this literature review are to be found in Chapter 2 and in Chapter 3.

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<sup>11</sup> The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192

## 1.2.2 PRACTICAL PROBLEM

The practical part of the research was concerned with trying to assess the level of understanding, and of the perceptions, of EC internal market technical legislation that exists amongst the groups of users of this legislation. The understanding and perceptions of particular interest to this research related to the processes involved in the EC internal market technical legislative process. Among the questions to be addressed was one concerned with the *de facto* existence of the internal market; was it perceived as a reality, was it perceived as something that nearly exists and that may indeed exist in the not too distant future or was it perceived as no more than a convenient illusion among officials and politicians? The Internal Market Scoreboards (Commission, 2001, 2002, 2003, 2004) discussed in Chapter 3 establish one view of the status of the EC internal market; but is the overall view of EC internal market practitioners consistent with the Commission's view?

At the outset of this research it was expected that the study of the technical legislative process within the EU would be a passive exercise. As the research progressed apparent anomalies and other difficulties were encountered. To resolve these anomalies and difficulties this area of the research had to become much more active. This change resulted in questions being put to various parts of the technical legislative process – in effect the process was tested. Detailed reporting of the research questions and of the methodology to determine answers to these questions is to be found in Chapter 3 and in Chapter 4.

## 1.3 Justification for the research

Prior to this research being undertaken there was considerable evidence, though largely anecdotal from professional colleagues and acquaintances, that the EC internal market technical legislative process was not well controlled. There was evidence of what appeared to be a process drift with time. This process drift suggests a process not well controlled. The initial suggestion of a process not well controlled was supported by perceptions of differences of procedure for different items of EC internal market technical legislation going through the same stages at the same time.



In addition to the above anecdotal evidence the author was aware of questions being asked about where the relevant process information could be found. These questions were being asked from within the groups who are users of the EC internal market technical legislation. There were few, if any, helpful answers to be heard.

For the internal market for goods the legislative framework has two aspects. The first aspect is that the EC secondary legislation is securely based on the appropriate Treaty provisions. Assessments of the choice of the legal basis of the directives, and European Court of Justice case law related to the choices made, are not considered in detail in this research.

The second aspect of the framework for the free movement of goods is that the various individual pieces of EC internal market technical legislation should provide a clear, consistent, framework which the groups of users of the legislation may each use to accomplish their respective tasks. Article 94 of the Consolidated Version of the Treaty Establishing the European Community<sup>12</sup> requires that the framework for the internal market be achieved through the use of directives. Directives are legal instruments, defined in Article 249<sup>13</sup> in the following terms: *'A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.'* Thus the Member States are required to transpose the requirements set out in directives into individual Member State legislation. The use of directives as the legal instrument for EC internal market technical legislation thereby extends the legislative process to include the process by which Member States transpose directives into national legislation.

In addition to the above Rogers (1998) suggests that there is a need for a full investigation, and subsequent documentation, of the rules governing one particular section of the overall process, the actual legislative drafting process, so that the process may be controlled.

The preceding discussion focuses on the processes of the EU institutions involved in the drafting of EC internal market technical legislation. From a product manufacturer's

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<sup>12</sup> N. 9 above

<sup>13</sup> N. 9 above

perspective the means of demonstrating compliance with current internal market technical legislation is also of significance. A scheme has been put into operation<sup>14</sup> whereby certain standards prepared by European standardisation organisations in support of EC internal market technical legislation can be awarded a special status. Standards awarded this special status are identified as 'harmonised standards' and carry with them legally accepted presumptions of conformity with the requirements of EC internal market technical legislation. During the period of this research the process whereby a European standard is adopted as a harmonised standard was modified and has become both more transparent and which now involves internal market practitioners.

The effects of EC internal market technical legislation on different groups of users are quite varied. For Member State legislative officials there is a Treaty obligation to enact national legislation within a defined timescale. The technical requirements of this national legislation are already determined in the directive. This leaves the Member States to determine the enforcement regime and the penalties for infringement of the legislation. For Member State enforcement these officials may be from either central or local government. The requirements for enforcement are set out in the national legislation. For these enforcement officials the regime may be reactive, complaint driven, or proactive where a program of inspection is specified. In either case risk to the enforcement agency is low. If the designated enforcement regime fails to provide the necessary level of protection the national legislation may be revised.

Manufacturers have a greater need for the EC internal market technical legislation to be workable than do either of the two groups described above. The upper and lower bounds of what is workable are related to what is technically achievable and what is required to provide adequate protection to users of products. Directives are very broad in scope and may encompass many industry sectors. It is unlikely that the small team of EC institution officials drafting new EC internal market technical legislation will be able to assess, on their own, the impact of proposed legislation across all of the industries that might be affected. There is a need therefore, to ensure that manufacturers of products coming within the remit of new technical legislation have an adequate opportunity to become familiar with proposals for technical legislative change at an

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<sup>14</sup> Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ 1998 L 204/37-47

early stage. Dialogue may then take place between manufacturers and the legislation drafters so that no unnecessary burdens are placed on manufacturers. This necessary dialogue between manufacturers and legislation drafters can only take place in a timely and efficient way if the technical legislative process is available to all and is user friendly for groups of users, and individuals, outside of the EC institutions.

A careful consideration of the above has led to the establishment of a specific aim for this research, as set out in the next section.

### 1.3.1 AIM OF THE INVESTIGATION

The aim of this project is to identify causes of potential weaknesses in the EC internal market technical legislative process as seen from the perspective of someone outside of the EC institutions with a need to manage engagement with the process, and to put forward possible process improvements. This management perspective of the process differentiates this survey from other, legally based, surveys of this area. To attain this aim the following supporting objectives were established:

- 1 To critically investigate the EC internal market technical legislative process with a management perspective of someone outside of the EC institutions.
- 2 To investigate the knowledge and perceptions of the internal market held by EC internal market practitioners.
- 3 To investigate the role of harmonised standards in support of EC internal market technical legislation.

### 1.3.2 ACTIVITIES IN SUPPORT OF THE AIM AND OBJECTIVES

The achievement of the Aim set out in Section 1.3.1 and its supporting objectives was enabled through the execution of the following, more detailed, activities. Table 1.1 shows how the outputs from these detailed activities are used in support of the objectives and hence the Aim.

**Table 1.1 Showing the relationship between the Objectives and the supporting activities**

Objective	Supporting Activity
1	a b c d e
2	f
3	g

- a Identify the European Union institutions that are involved in the EC internal market technical legislative process, and to establish the authorities of these institutions, then to identify any functions in support of the technical legislation. Identification of the appropriate EU institutions provides a focus for the remainder of the research.
- b Identify the existing process descriptions of the EU institutions involved in the EC internal market technical legislative process and of the functions in support of technical legislation. Review of the existing process descriptions will reveal those parts of the processes that do not have an adequate process description. Any parts of the overall process with inadequate process descriptions may prevent the overall process from being deterministic.
- c Identify the routes by which the groups most directly affected by any EC internal market technical legislation (Member State governments, manufacturing industry and Member State enforcement agencies) may interface with the institutions and functions identified in supporting activities a & b. Knowledge of these routes allows interested individuals, or groups, outside of the EU institutions to make their views known in a manner most likely to be heard, understood and accepted as a basis for subsequent action by the EU institutions.
- d Where practical, apply tests to the EC internal market technical legislative process to determine if the actual process follows its description and if the process is accessible to those outside of the EU institutions.
- e Investigate methods of improving the processes of the EU institutions involved with the generation of EC internal market technical legislation. One possible method for process improvement would be the use of the CEN System Handbook (CEN, 1998) as a model for the presentation of the EU institutions' processes. Process improvement may lead to benefits for all sectors of the Community – better protection for consumers, enhanced opportunities for user groups to input their views, reduced drafting time for proposals for internal market technical legislation and, as output from the processes, more appropriate EC internal market technical legislation.
- f Assess, through the use of a sample of the population of EC internal market practitioners, the level of knowledge of the EC internal market technical legislative process and the perception of how well the EC internal market achieves its objectives of barrier-free trade.

- g Investigate the role of European harmonised standards in the application of EC internal market technical legislation. Currently it is unclear whether users of EC internal market technical legislation (Member State governments, Member State enforcement agencies and manufacturing industry), manufacturing industry in particular, benefit from the availability of harmonised standards. There exists a perception that the clarity of language of harmonised standards, in support of the broad requirements expressed in internal market technical legislation, is an advantage. Is this perception widely held?

## 1.4 Contribution to knowledge

A body of knowledge has been generated to inform all parties involved with EC internal market technical legislation. All parties to the process should now be better informed to make contributions towards ensuring that future EC internal market technical legislation is clear, timely, accessible and cost effective in its application. A brief overview of the contribution to knowledge shows that:-

- 1 In areas of the treaties where an attempt is made to define what should be a deterministic process there is a lack of completeness in the definition.
- 2 Weaknesses in the overall EC internal market technical legislative process have led to distortions of the intended 'level playing field' internal market.
- 3 The level of knowledge of the EC internal market technical legislative process held by internal market practitioners is low.
- 4 The perception of the internal market held by internal market practitioners is that the internal market is not yet complete.

Up to the early 1990s there was, at least in the petrol pump manufacturing sector of British industry, an understanding and acceptance of the need to manufacture to a number of different technical specifications in order to satisfy the legislative needs of all of the EC Member States – this despite the United Kingdom being part of the European Economic Community and its common market.

By January 1993 the much hailed internal market was expected to have removed the need for more than one technical specification for any given product. The January 1993, and subsequent, messages that the internal market was complete, whereby one specification fits all Member States, appears to have been accepted by manufacturing industry's senior management in a way that has created tensions between senior management and their own internal market practitioners because the rhetoric about, and the reality of, the internal market remain different.

## 1.5 Methodology

The methods used for data collection and data analysis and the rationale for their selection are fully described in Chapter 4 of this thesis. This section provides a broad description of the methods used.

The data collection consisted of the following three steps:

- a) Critical textual analysis;
- b) Testing the responses of the EC internal market technical legislative process;
- c) Assessing the opinions of EC internal market practitioners.

The critical textual analysis consisted of three separate, but inter-related, phases. The first phase of the critical textual analysis was concerned with the determination of which EU institutions exist. This determination was achieved through a study of the EU primary legislation. The results of this first phase are presented in Chapter 2 'The law making process' and in Appendix I 'Chronological list of European Union and European Community major legislative events'.

The second phase of the critical textual analysis, also presented in Chapter 2, was concerned with the documentation determining the processes and procedures of the EU institutions identified in the first phase as being of relevance to the EC internal market technical legislative process.



The third phase of the critical textual analysis, presented in Chapter 3 'The literature survey and review', was concerned with a critical assessment of primary EU legislation, secondary EC internal market technical legislation and the published literature. In the context of this research the published literature was divided into three categories:-

- 1 The official view of the internal market, from commissioned reports, reports from EU institutions and pronouncements from representatives of EU institutions.
- 2 Published papers on EU institutions' processes and procedures, the effectiveness of these procedures and general reflections on the internal market, harmonization etc.
- 3 Reviews of practitioners' perceptions of EU institutions and of the internal market.

Prior to this research the author had only limited access to the opinions of the users of EC internal market technical legislation<sup>15</sup> and its support functions. It was decided that to obtain the opinions of users of EC internal market technical legislation it would be necessary to talk to people in some formal way. The method adopted for formally talking to people was that of a structured interview. The structured interview was conducted with a sample of people concerned with the application and implementation, on a daily basis, of the current *corpus* of EC internal market technical legislation. Details in support of these decisions are provided in Chapter 4 'Methodology' and a copy of the Structured Interview used as the instrument for the collection of data is provided in Appendix II. The fieldwork data is presented in Chapter 5 'Results and analysis'.

## 1.6 Definitions

The list included on page (x) provides definitions of words and phrases that, for the purposes of this research, have the particular meaning given there.

At the commencement of this research, and for most of the period that this research was active, the applicable primary legislation in force for the EC was provided in the

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<sup>15</sup> The reader is referred to the list of Definitions on page x

Consolidated Version of the Treaty Establishing the European Community<sup>16</sup>. Post dating and amending, the Consolidated Version of the Treaty Establishing the European Community is the Treaty of Nice<sup>17</sup>, a treaty that came into effect on 1<sup>st</sup> February 2003.

The main purposes of this treaty, and its attached protocols, are to extend some political boundaries and to pave the way for a major expansion of the European Union. At the time of signing the Treaty of Nice it was anticipated that in the year 2004 there would be twelve new Member States of the European Union<sup>18</sup>. To accommodate this anticipated enlargement some structural reforms of the membership and voting rights of institutions within the EU had to be put in place. These structural reforms have no significant impact on this research, research that is concerned with the EC internal market technical legislative process.

In addition to its main purposes, as noted above, the Treaty of Nice<sup>19</sup>, by application of its Article 2, has made a number of amendments to the Consolidated Version of the Treaty Establishing the European Community<sup>20</sup>. Three of these amendments have a very minor bearing on this research and are dealt with at appropriate places in the text.

In December 2002 the Consolidated Version of the Treaty Establishing the European Community<sup>21</sup> was re-published incorporating the changes brought about by the application of the Treaty of Nice<sup>22</sup>. The text of the Consolidated Version of the Treaty Establishing the European Community<sup>23</sup> no longer provides duality of Article numbering as existed in the previous version<sup>24</sup>. Within this thesis the convention of single system Article numbering will be followed except where appropriate.

Official documentation of the EC is available in all of its official languages and working languages<sup>25</sup>. Throughout this text all references to official sources are to be construed

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<sup>16</sup> Consolidated Version of the Treaty Establishing the European Community, OJ 1997 C 325/33-184

<sup>17</sup> Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain other Acts, OJ 2001 C 80/1-87

<sup>18</sup> Ten new Member States joined the EU as of 1<sup>st</sup> May 2004

<sup>19</sup> N. 17 above

<sup>20</sup> N. 16 above

<sup>21</sup> N. 16 above

<sup>22</sup> N. 17 above

<sup>23</sup> N. 9 above

<sup>24</sup> N. 16 above

<sup>25</sup> Decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union (95/1/EC, Euratom, ECSC), OJ L 1/218

as references to the appropriate English language text except where noted to the contrary.

## 1.7 Delimitation of scope

It is recognised that any given product manufacturer may wish to sell products in markets beyond the EC internal market. For each market outside of the EC internal market there may be similar, though not identical, technical legislative processes to those processes that exist for the EC internal market. Technical legislative processes associated with markets other than the EC internal market are not dealt with in this research. This research is restricted to a study of the processes that relate to the EC internal market technical legislative process.

It is to be expected that for any supranational organisations such as the EU and the EC almost any significant problem that has to be addressed by that organisation will be interdisciplinary. Chapter 4 'Methodology' discusses the justification for treating this research as applied research. Scott (1998) makes the following comment which supports the interdisciplinary expectation; '*...applied studies [research] are much more likely to be interdisciplinary: practical problems do not respect disciplinary boundaries.*', and this research is undoubtedly about a practical problem. In regard to the EU Craig and de Burca (1998) note:

*'That the EU legal and constitutional order should be so complex and labyrinthine may not be very satisfactory, but it is hardly surprising, given that it is largely a reflection of the political compromises and differences of approach across a vast range of policy areas among fifteen different Member States.'*

Whenever significant decisions are made within the EC it is to be expected that they will be influenced by the political, economic, legal and process environment current at the time the decision is made. The political and economic circumstances that existed at those times when the current EC internal market technical legislative processes were created have not been evaluated within this research. Nor has it been the purpose of this research to study in detail case law established by the European Court of Justice (ECJ) relating to the EC internal market. Where appropriate, the judgements of the ECJ relating to secondary legislation should be taken into account by Commission officials

when drafting internal market directives. This research is concerned with the processes for the generation of legislation under the authority of Article 95 of the Treaty establishing the European Economic Community<sup>26</sup> as last modified by the Treaty of Nice<sup>27</sup>. The consolidated version of the above treaties, now entitled the Consolidated Version of the Treaty Establishing the European Community<sup>28</sup> will, for the purposes of this research, be taken as the definitive treaty document unless specifically noted to the contrary.

Chapter 2 outlines the way that the European Community institutions and their interrelationships have changed as a result of Inter Governmental Conferences that in turn have led to treaty changes. As a result of these treaty changes the balance of institutional power has shifted towards the European Parliament although the Council remains the most powerful body. This research does not attempt to analyse in detail either the reasons for, or the detailed effects of, any shift in the balance of power. It is important to recognise, however, that the shifts of power have been instrumental in shaping the current process.

The generation and application of EC internal market technical legislation involves the governments of the individual Member States of the European Union. Where it is appropriate to consider the involvement of Member State governments this research was restricted to a consideration of the United Kingdom government only.

Many sectors of industry are affected by EC internal market technical legislation. It was beyond the scope of this research to investigate how each of these industries interfaces with the EC internal market technical legislative process. This research was, therefore, restricted to study of the perspectives of two sectors of manufacturing industry – fuel dispensers and weighing equipment. A link between the two sectors of manufacturing industry selected for the study is that products from each of these two sectors are subject to the requirements of legal metrology. Legal metrological requirements affect products from these two sectors of industry because their products are concerned with the measurement of commodities for sale to the public.

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<sup>26</sup> Treaty establishing the European Economic Community [Treaty of Rome], HMSO, London (This is Cmnd. 4864 that reproduces, in English, the text of the Treaty as originally published in 1957)

<sup>27</sup> N. 17 above

<sup>28</sup> N. 9 above

It is further recognised that, as a result of the United Kingdom joining the European Communities, the UK government has assumed some of the constitutional function and power of parliament (Cygan, 1998). This research makes no attempt to analyse any of the constitutional issues that may have resulted from the UK joining the EC.

In the latter stages of the preparation of this thesis the European Union and hence the European Community was enlarged from fifteen Member States to twenty five Member States, this enlargement formally occurred on 1<sup>st</sup> May 2004. This thesis is, therefore, written on the basis of the treaties, and of an EU of fifteen Member States, that existed prior to 1<sup>st</sup> May 2004. None of the process criticisms noted in this thesis are likely to be diminished as a result of the EU enlargement.

It is acknowledged that the Treaty establishing a Constitution for Europe<sup>29</sup> was published subsequent to the submission of this thesis. The existence of this Treaty, one that cannot enter into force before 1 November 2006, has no material effect on the research reported here.

## 1.8 Outline of thesis

The overall literature review of this research, covered in Chapters 2 and 3, is atypical in that it encompasses both archival research and a more traditional, critical, review of the literature. Chapter 2 provides, from archival research, a description of the European Community internal market law making process and identifies the EU institutions involved. Chapter 3, the more traditional literature survey and review is concerned with establishing the official view of the internal market, its processes and procedures and their effectiveness. This review then broadens its scope to review the perceptions of those involved, on a daily basis, with working within the EC internal market technical legislative framework.

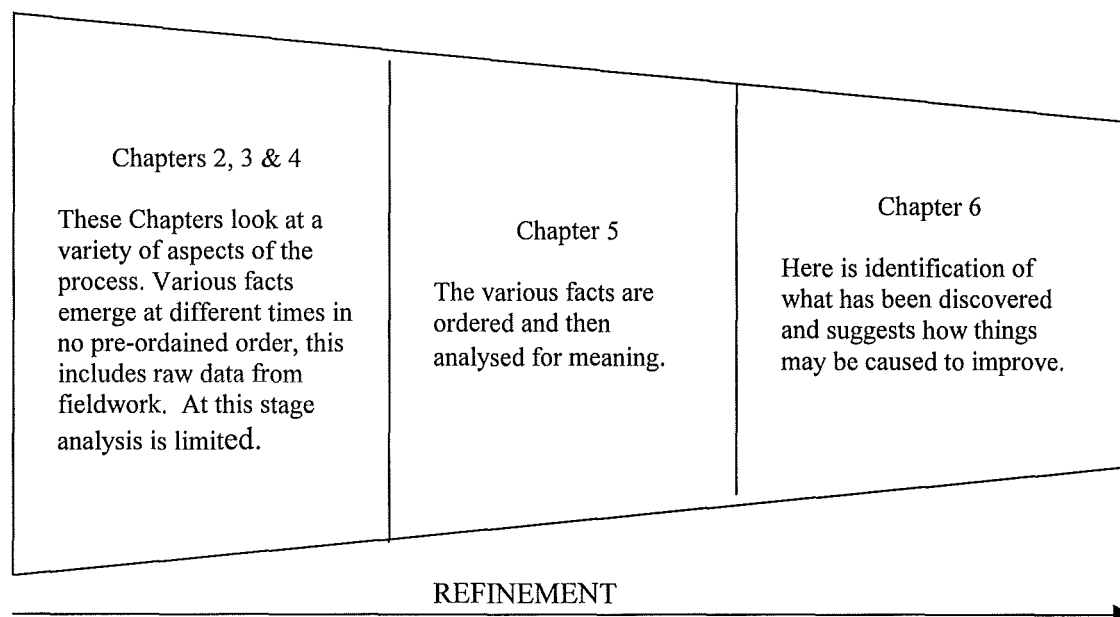
The way that the overall literature review of Chapters 2 and 3 provides the foundation for the remainder of the thesis is indicated by the overall summary of the structure of the

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<sup>29</sup> Treaty establishing a Constitution for Europe, OJ 2004 C 310 A preliminary review of this Treaty suggests that Article III-396, replacing existing Article 251, improves determinism of the EC internal market legislative process. This Treaty cannot enter into force until after it has been ratified by each of the Member States. If the Treaty enters into force then its effect on the EC internal market technical legislative process would become an area for additional study.

thesis presented in Figure 1.1 which also shows how the broad based data is refined to allow reasoned conclusions to be drawn.

**Figure 1.1 The Cone of Refinement of data through the thesis**



Chapter 4 is concerned primarily with the collection of data from people with knowledge and/or perceptions of the EC internal market technical legislative process. While collecting data from people about the processes of drafting internal market technical legislation the opportunity was taken to ask some more general questions. Some insight into the level of training provided for drafters of EC internal market technical legislation as compared to the level of training of users of EC internal market technical legislation was an anticipated outcome from these more general questions.

The data was obtained from people via a structured interview, discussed in Chapter 4 and available as Appendix II. The data collected via the structured interview was of limited value until collated and analysed. Chapter 5 provides summaries of the responses to the structured interview questions and data from other fieldwork together with analyses of the information obtained.

Conclusions drawn from the research, together with recommendations for further work and recommendations to some groups of people involved, in various ways, with EC internal market technical legislation are presented in Chapter 6.

## 1.9 Summary

In this Chapter the major features of the background to the research have been established. The need for the EC internal market technical legislative process to be clear and accessible has been briefly discussed. Research questions together with anticipated outcomes of this research have been outlined. A more detailed treatment of these topics is provided in the following Chapters.

## Chapter 2 The law making process

### 2.1 Introduction

No critical review of a set of processes is possible until the processes themselves are known, ideally the processes would be fully documented by those with responsibility for the processes that are to be reviewed.

For European Community (EC) internal market technical legislation the top level processes are described in EC primary legislation. This Chapter will first elucidate the progressive nature of the changes to European Union and European Community primary legislation. This Chapter will then show that, from the primary legislation now in force, it is possible to determine which of the EU institutions currently in place have a role in the EC internal market technical legislative process.

For each of the EU institutions with a role in the generation of EC internal market technical legislative process three aspects of that institution's processes will be investigated. The first aspect to be investigated will be the interactions with other EU institutions; the second, the institution's internal processes and the third, the institution's interfaces to organisations beyond the other EU institutions.

The diversity of language within the Member States of the EU is recognised within the EU primary legislation, some discussion on the effects of this recognition is included.

### 2.2 European Community primary legislation

European Union and European Community primary legislation has as its genesis the Treaty establishing the European Coal and Steel Community<sup>1,2</sup>. From this somewhat limited beginning, the primary legislation has progressed via a number of quite clearly defined stages. Each of these stages has been characterised by an inter-governmental conference followed by the signing of a new treaty. The primary legislation currently in

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<sup>1</sup> Treaty establishing the European Coal and Steel Community [ECSC] [Treaty of Paris], Cmnd.4863, HMSO, London, [Reproduces, in English, the text of the Treaty as originally published in 1951]

<sup>2</sup> The validity of the Treaty of Paris expired 23 July 2002 after its fifty year life.



force is the Treaty establishing the European Economic Community<sup>3</sup> [Treaty of Rome] as last amended by the Treaty of Nice<sup>4</sup>, however all references to current primary legislation will be to the Consolidated Version of the Treaty Establishing the European Community<sup>5</sup> as explained in Section 1.5

It should be noted that the Treaty of Amsterdam<sup>6</sup> was somewhat different from earlier amending treaties in that although it has provided amendments to the earlier treaties it has also provided a Consolidated Version of the Treaty Establishing the Economic Community<sup>7</sup> which re-established a coherent set of treaty article numbers. The subsequent Treaty of Nice<sup>8</sup> introduced amendments to the newly established articles and also gave rise to an updated Consolidated Version of the Treaty Establishing the European Community<sup>9</sup>.

A number of institutions of the EU have been established as the result of the application of the EU primary legislation. Not all of the institutions of the EU currently in place have existed from the coming into force of the Treaty of Rome<sup>10</sup>. The EU institutions that were not established by the Treaty of Rome (op. cit.) have been established by amending treaties. A brief outline of the sequence of treaties from the European Coal and Steel Treaty through to the most recent amending treaty, the Treaty of Nice, is provided in Table AI.1 of Appendix I. Also included in Table AI.1 of Appendix I are some other EU legislative acts, together with the UK legislative acts to ratify the treaties. These additions are included to provide an overview of the current situation.

## 2.2.1 EUROPEAN COMMUNITY INSTITUTIONS

The brief outline of the development of EU institutions, provided in Table AI.1 of Appendix I, does not attempt to list all EU institutions. Other EU institutions, for

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<sup>3</sup> Treaty establishing the European Economic Community [EEC] [Treaty of Rome], Cmnd.4864, HMSO, London, [Reproduces, in English, the text of the Treaty as originally published in 1957]

<sup>4</sup> Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [Treaty of Nice], OJ 2001 C 80/1-87

<sup>5</sup> Consolidated Version of the Treaty Establishing the European Community, OJ 2002 C 325/33-184

<sup>6</sup> Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [Treaty of Amsterdam], OJ 1997 C 340/1-144

<sup>7</sup> Consolidated Version of the Treaty Establishing the European Community, OJ 1997 C 340/173-308

<sup>8</sup> N.4 above

<sup>9</sup> N.5 above

<sup>10</sup> N.3 above

example the European Investment Bank<sup>11</sup> are, of course, important to the overall objectives of the EU. This research is restricted to the EC and its internal market, therefore only those institutions that have direct relevance to the EC internal market are considered in detail here.

Using Table AI.1 of Appendix I as a starting point it is now possible to focus on the institutions with direct relevance to the European Community and specifically those with effect on the EC internal market technical legislative process. Table 2.1 is assembled from data already provided in Table AI.1 of Appendix I and shows more clearly how the EU institutions affecting the EC have been established.

It is helpful to clarify here the use of the term 'institution'. Article 4 (1) of the Treaty of Rome<sup>12</sup> lists four institutions: *an Assembly, a Council, a Commission and a Court of Justice*. Article 4 (2) (op. cit.) reads '*The Council and the Commission shall be assisted by an Economic and Social Committee acting in an advisory capacity.*' From the above it would seem reasonable to conclude that within the then European Economic Community the Economic and Social Committee (ESC) was not seen as an institution.

A rather different view of the status of the ESC emerges from a review of the 'Table of Contents' of the Treaty of Rome (op. cit.), for ease of understanding the relevant extract of the Table of Contents is set out below:

	<i>Article</i>
<i>PART FIVE – The institutions of the Community</i>	<i>137 – 209</i>
<i>Title I – Provisions governing the institutions</i>	<i>137 – 199</i>
<i>Chapter 1 – The institutions</i>	<i>137 – 188</i>
<i>Section 1 – The Assembly</i>	<i>137 – 144</i>
<i>Section 2 – The Council</i>	<i>145 – 154</i>
<i>Section 3 – The Commission</i>	<i>155 – 163</i>
<i>Section 4 – The Court of Justice</i>	<i>164 – 188</i>
 <i>Chapter 2 – Provisions common to several institutions</i>	 <i>189 – 192</i>
<i>Chapter 3 – The Economic and Social Committee</i>	<i>193 – 198</i>
<i>Title II – Financial provisions</i>	<i>199 – 209</i>

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<sup>11</sup> N.5 above

<sup>12</sup> N.3 above

The above extract is somewhat unclear about the status of the ESC. The whole of PART FIVE is about the institutions of the Community and the ESC is included in PART FIVE suggesting that the ESC is seen as an institution. The ESC is included under 'Title I – The institutions of the Community' further suggesting that the ESC is seen as an institution. However, the exclusion of the ESC from 'Chapter 1 – The institutions' might be taken to suggest that the ESC is not seen as an institution.

Clearly, whatever its status, the ESC can only operate if there exists some financial support. Within Articles 193 to 198 there is no provision for financial support of the ESC. It would appear, therefore, that the only financial support available to the ESC is through Article 203 (2) (op. cit.) which begins '*Each institution of the Community shall draw up estimates of its expenditure ...*', which again suggests that the ESC must be seen as an institution of the European Economic Community.

The earliest European Economic Community Treaty, the Treaty of Rome<sup>13</sup>, does not make clear the status of the ESC because of the imprecision inherent in such a treaty document. The lack of clarity of the status of the ESC has persisted through several revisions of the EEC/EC treaties and remains in the current EC treaty, the Consolidated Version of the Treaty Establishing the European Community<sup>14</sup>. Notwithstanding the above, for the purposes of this research, references to the European Economic Community, European Union or European Community institutions shall be taken to include a reference to the Economic and Social Committee.

Support for the view expressed above that the Economic and Social Committee should be treated as an institution is provided on web page [www.europa.eu.int/eur-lex/pap/process\\_and\\_players6.html](http://www.europa.eu.int/eur-lex/pap/process_and_players6.html), accessed 9 June 2003, which lists the institutions of the EU and includes the Economic and Social Committee, albeit by the unofficial name European Economic and Social Committee. For clarity the EC institutions are listed in Table 2.2

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<sup>13</sup> N.3 above

<sup>14</sup> N.5 above

**Table 2.1 Indicating the introduction, change or re-affirmation of EC institutions by the treaties**

TREATIES							
ECSC <sup>15</sup>	EEC <sup>16</sup>	Euratom <sup>17</sup>	Merger <sup>18</sup>	SEA <sup>19</sup>	TEU <sup>20</sup>	ToA <sup>21</sup>	ToN <sup>22</sup>
High Authority			Single Commission		Commission	Commission	Commission
	Commission	Commission					
Common Assembly				European Parliament	European Parliament	European Parliament	European Parliament
	Assembly	Assembly					
Special Council			Single Council		Council	Council	Council
	Council	Council					
Court of Justice	Court of Justice	Court of Justice			Court of Justice	Court of Justice	Court of Justice
Consultative Committee	Economic and Social Committee	Economic and Social Committee			Economic and Social Committee	Economic and Social Committee	Economic and Social Committee
					Court of Auditors	Court of Auditors	Court of Auditors
					Committee of the Regions	Committee of the Regions	Committee of the Regions

<sup>15</sup> N.1 above

<sup>16</sup> N.3 above

<sup>17</sup> Treaty establishing the European Atomic Energy Community [Euratom], Cmnd.4865, HMSO, London, [Reproduces, in English, the text of the Treaty as originally published in 1957]

<sup>18</sup> Treaties establishing the European Communities – treaties amending these Treaties – Documents concerning the Accession, Luxembourg: Office for Official Publications of the European Communities, pp 745-773 [Merger Treaty](English text version of Official Journal of the European Communities, Number 152, 1967)

<sup>19</sup> Single European Act, OJ 1987 L 169/1-29

<sup>20</sup> Treaty on European Union [Maastricht Treaty], OJ 1992 C 191/1-67

<sup>21</sup> N.6 above

<sup>22</sup> N.7 above

**Table 2.2 Summary of EC institutions**

Commission
European Parliament
Council
Court of Justice
Economic and Social Committee
Court of Auditors
Committee of the Regions

From the institutions within this list it is now necessary to determine which of them are involved in the EC internal market technical legislative process, this is accomplished in Section 2.2.2

## 2.2.2 EUROPEAN COMMUNITY INTERNAL MARKET TREATY ARTICLES

For the purposes of this research the Consolidated Versions of the Treaty Establishing the European Community<sup>23</sup> were used as the prevailing primary legislation. Treaties amending the original Treaty establishing the European Economic Community had achieved their amendments by a series of modifications, insertions and deletions of Articles, an overall procedure that had made the resultant text very difficult to read. Working from the Consolidated Version of the Treaty Establishing the European Community<sup>24</sup>, the Articles governing the high level legislative processes to achieve EC internal market technical legislation have been identified. These Articles and their main provisions are shown in Table 2.3

**Table 2.3 Articles of importance to the internal market and their main provisions**

Article <sup>25</sup>	Main Provision
14	Establishes an internal market.
94	Council to issue directives after consulting EP and ESC.
95	Refers to the Article 251 procedures to be followed and sets out conditions for some national provisions.
249	Definition of 'directive' and other legislative acts.
251	Describes the procedures between Commission, EP and Council.
253	Requires legal basis for the legislative act and references to the necessary opinions (EP and ESC) to be noted in directives.
254	Requires adopted directives to be signed by the Presidents of the EP and of the Council and for them to be published in the OJEC (OJEU see Section 2.3.1).

<sup>23</sup> N.5 and N.7 above

<sup>24</sup> N.5 above

<sup>25</sup> N.5 above

Table 2.3 shows those Articles that are of importance to EC internal market technical legislation under the authority of the Treaty of Rome<sup>26</sup> as last amended by the Treaty of Nice<sup>27</sup>. Table 2.4 summarises the sequences of change that have contributed to the current status of each of the Articles identified in Table 2.3

Detailed study of the Consolidated version of the Treaty Establishing the European Community (op. cit.) Articles as listed in Table 2.3 shows that each of these Articles requires actions by various EC institutions. Correspondence between the Articles and the EC institutions identified by them is shown in Table 2.5

**Table 2.4 Development of current Articles of importance to the internal market**

EEC <sup>28</sup> Article	SEA <sup>29</sup> Article	TEU <sup>30</sup> Article	Consolidated <sup>31</sup> Version Article (Amsterdam)	Consolidated <sup>32</sup> Version Article (Nice)
8 (p5)	8a (I, p7)	7a (N, p7)	14 (N, p185)	14 (N, p44)
100 (p37)	100 (NC)	100 (R, p10)	94 (N, p213)	94 (N, p69)
	100a (I, p8)	100a (A, p10)	95 (N, p213)	95 (N, pp69/70)
189 (p60)	189 (NC)	189 (R, p37)	249 (N, p278)	249 (N, p132)
		189b (I, p37)	251 (A, N, p279)	251 (N, p133)
190 (p60)	190 (NC)	190 (R, p39)	253 (N, p281)	253 (N, p135)
191 (p61)	191 (NC)	191 (R, p39)	254 (N, p281)	254 (A, p135)

Note: A Amended I Inserted N Renumbered  
NC No Change R Replaced p Page number

<sup>26</sup> N.3 above

<sup>27</sup> N.4 above

<sup>28</sup> N.3 above

<sup>29</sup> N.19 above

<sup>30</sup> N.20 above

<sup>31</sup> N.7 above

<sup>32</sup> N.5 above

**Table 2.5 Correspondence between selected Articles of the Consolidated Version of Treaty of Amsterdam and the EC institutions identified**

<b>Consolidated Version Article</b>	<b>EC Institutions identified by Consolidated Version Article</b>
14	Council Commission
94	European Parliament Economic and Social Committee
95	Council Economic and Social Committee
249	European Parliament Council Commission
250	Council Commission
251	Commission European Parliament Council
253	European Parliament Council Commission
254	European Parliament (President) Council (President)

It is now possible to compare the set of EC institutions, as set out in Table 2.2, with those EC institutions identified by the Articles of the Consolidated Version of the Treaty Establishing the European Community<sup>33</sup> as concerned with the European Community internal market. Such a comparison is made in Table 2.6

**Table 2.6 EC institutions and EC institutions identified for the EC internal market legislative process**

<b>EC institutions</b>	<b>EC institutions identified for the EC internal market legislative process</b>
Commission	Commission
European Parliament	European Parliament
Council	Council
Court of Justice	
Economic and Social Committee	Economic and Social Committee
Court of Auditors	
Committee of the Regions	

<sup>33</sup> N.5 above

It is evident from Table 2.6 that there are three EC institutions that are not identified by the EU primary legislation as being part of the EC internal market technical legislative process. The role of the Court of Justice is specified in Article 220 (op. cit.) For ease of reference the text of an extract from Article 220 is reproduced below:

*Article 220(Extract)*

*The Court of Justice and the Court of First Instance, each within its jurisdiction, shall ensure that in the interpretation and application of this Treaty the law is observed.*

It can be inferred from Article 220 that the Court of Justice, and the Court of First Instance, have no direct role in the EC internal market technical legislative process. The Court of Justice does, however, have an important interpretative role 'post process'. The results of any interpretations issued by the Court of Justice are then available to other EC institutions for assistance in the drafting of subsequent EC internal market technical legislation. Given that the Court of Justice has no direct role in the EC internal market technical legislative process the processes of the Court of Justice will not be studied further in this research.

The Committee of the Regions (op. cit.) has an advisory role, limited to concerns with regard to cross-border cooperation. The Committee of the Regions therefore has no role in the EC internal market technical legislative process and will not be further considered within this research. The Court of Auditors (op. cit.) has, as would be expected, an accounting function in relation to the EC institutions. The Court of Auditors has no role in the EC internal market technical legislative process and will not be further considered within this research.

The Official Journal of the European Communities in itself is not a tangible institution, it is a publication of the Office for Official Publications. The Official Journal of the European Communities (OJEC) takes no active role in the sense of there being a dialogue between it and other institutions. It does, however, have an important function in the publication of draft proposals in the 'C' series of the OJEC and also in the publication of final legislative texts in the 'L' series of the OJEC. Given that there is no dialogue with the OJEC, it being a straight through process, the OJEC will not be



considered to be an institution involved in the EC internal market technical legislative process.

Within this sub-section the EC institutions that have a direct role in the EC internal market technical legislative process have been identified, these EC institutions are summarised in Table 2.7

**Table 2.7 EC institutions involved in the EC internal market technical legislative process.**

<b>EC institutions involved in the EC internal market technical legislative process</b>
Commission
European Parliament
Council
Economic and Social Committee

Henceforward, within this thesis, references to EC institutions shall, unless otherwise specifically noted, be taken to mean those EC institutions involved in the EC internal market technical legislative process and are as listed in Table 2.7

### **2.2.3 MEMBERSHIP OF THE EC INSTITUTIONS INVOLVED IN THE EC INTERNAL MARKET TECHNICAL LEGISLATIVE PROCESS**

The rules governing the membership of each of those EC institutions involved in the EC internal market technical legislative process may be significant with regard to those EC institutions' relationships to other organisations and/or individuals, such relationships are discussed in Section 2.3.4 For each of the four EC institutions involved in the EC internal market technical legislative process the current treaty provisions, the Consolidated Version of the Treaty Establishing the European Community<sup>34</sup> articles governing those institutions are identified and the text of the specific provisions on the process of membership are given in full.

With the exception of the Council the Treaty provisions give no guidance as to the organisation that is to be in place to assist the institutions in carrying out their tasks.

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<sup>34</sup> N.5 above

### 2.2.3.1 The Commission

It is helpful to begin with an understanding of the nomenclature relating to 'The Commission'. In strict terms the Commission consists of twenty Members<sup>35</sup> (op. cit.). It is to be expected that twenty Members of the Commission, a collegiate body whose individual members are known as Commissioners, alone cannot perform all of the tasks that are to be carried out. As a result there exists a significant organisation, often referred to as a bureaucracy, assisting the Commissioners with their work. The methods of recruitment to this organisation are not specifically set out in the Treaty, in general terms they appear to be somewhat similar to those of Member State civil services and also include secondments from Member States' civil services.

In everyday usage the term 'The Commission' is used very loosely and may mean either the Commissioners as a collegiate body, or the officials assisting the Commissioners or the Commissioners as a collegiate body together with the officials. It is not always evident from the context of the use of the term 'The Commission' which of the three possible meanings is intended. As will be made more clear in Section 2.3.4 there are times when it is important to be certain which of the three meanings given here, is understood by a lay person.

Set out in Table 2.8 are the Treaty articles that define the constitution of the Commission and the article that determines how people become Members of the Commission.

**Table 2.8 Constitution and Membership of the Commission**

<b>Articles on the Constitution</b>	<b>Article on Membership</b>
211-219	
	214

For clarity, the text of Article 214 of the Treaty (op. cit.) is reproduced below:

*Article 214*

*1. The Members of the Commission shall be appointed, in accordance with the procedure referred to in paragraph 2, for a period of five years, subject, if need be, to Article 201.*

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<sup>35</sup> Increased to 25 Members for the Commission appointed in November 2004 following the May 2004 enlargement of the EU

*Their term of office shall be renewable.*

*2. The Council, meeting in the composition of Heads of State or Government and acting by a qualified majority, shall nominate the person it intends to appoint as President of the Commission; the nomination shall be approved by the European Parliament.*

*The Council, acting by a qualified majority and by common accord with the nominee for President, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State.*

*The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by the Council, acting by a qualified majority*

At the time of writing, May 2004, the United Kingdom has the right to nominate two Members of the Commission<sup>36</sup>, their appointments being for a period of five years. The nominations, and appointments, of Members of the Commission from the United Kingdom are made by the United Kingdom government in power at the time. Should the United Kingdom government change during the five year tenure as Members of the Commission the incoming United Kingdom government does not have the right to dismiss those Members of the Commission inherited from the previous United Kingdom government. It is interesting to note that while it may be argued that the Members of the Commission are political appointments they do not necessarily reflect the current party political situation.

The Consolidated Version of the Treaty Establishing the European Community (op. cit.) gives no specific guidance as to how Member States shall select their nominees for membership of the Commission. It has not been possible to identify any formal process by which the United Kingdom government selects its nominees. To date nominees for membership of the Commission from the United Kingdom have been senior national political figures rather than senior figures from industry or commerce.

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<sup>36</sup> With the Commission to be nominated in 2004 following EU expansion the United Kingdom has the right to nominate only one Member of the Commission.

### 2.2.3.2 The Council

Set out in Table 2.9 are the Treaty articles that define the constitution of the Council and the article that determines how people become members of the Council.

**Table 2.9 Constitution and Membership of the Council**

Articles on the Constitution	Article on Membership
202-210	
	203

For clarity the text of Article 203 of the Consolidated Version of the Treaty Establishing the European Community (op. cit.) is reproduced below:

*Article 203*

*The Council shall consist of a representative of each Member State at ministerial level, authorised to commit the government of that Member State.*

*The office of President shall be held in turn by each Member State in the Council for a term of six months in the order decided by the Council acting unanimously.*

From the above text it can be seen that Council membership clearly reflects the political opinion of the United Kingdom government of the time. This is in contrast to the Members of the Commission from the United Kingdom who may have been nominated by a previous United Kingdom government holding different political views.

The treatment of Council in the Treaty (op. cit.) is unlike the treatment of the other institutions in that additional reference is made to the way the work of Council is to be supported by other named organisations. For clarity the relevant extracts from Article 207 are reproduced below:

*Article 207 (Extracts)*

*1. A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of Council and for carrying out the tasks assigned to it by the Council. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.*

*2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General, High Representative for the common foreign and security policy, who shall be assisted by a Deputy Secretary-General responsible for the running of the General Secretariat. The Secretary-General and the Deputy Secretary-General shall be appointed by the Council acting by a qualified majority.*

Article 207 (1) above allows, as one would perhaps expect, for much of the preliminary work relating to Council meetings to be performed by officials of Member State governments. However, final decisions appear to be reserved for Member State elected representatives attending Council meetings.

For completeness it should be noted here that in addition to Council there exists within the European Union a European Council (op. cit. Article 4). The European Council is a meeting of heads of state or government taking place twice per year and is the forum within which broader political issues of interest to the European Union are discussed, it is not the forum where detailed issues of the EC internal market are discussed. The European Council will not be considered further within this research.

### 2.2.3.3 The European Parliament

Set out in Table 2.10 are the Consolidated Version of the Treaty Establishing the European Community (op. cit.) articles that define the constitution of the European Parliament together with the article that determines how people become members of the European Parliament.

**Table 2.10 Constitution and Membership of the European Parliament**

Articles on the Constitution	Article on Membership
189-201	
	190

For clarity the text of extracts of Article 190 of the Treaty are reproduced below:

*Article 190 (Extracts)*

*1. The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.*

*3. Representatives shall be elected for a term of five years.*

#### 2.2.3.4 The Economic and Social Committee

Set out in Table 2.11 are the Consolidated Version of the Treaty Establishing the European Community (op. cit.) articles that define the constitution of the Economic and Social Committee and the articles that determine how people become members of the Economic and Social Committee.

**Table 2.11 Constitution and Membership of the Economic and Social Committee**

<b>Articles on the Constitution</b>	<b>Articles on Membership</b>
257-262	
	258-259

For clarity the text of Article 259 of the Treaty is reproduced below:

*Article 259*

*1. The members of the Committee shall be appointed for four years, on proposals from the Member States. The Council, acting by a qualified majority, shall adopt the list of members drawn up in accordance with the proposals made by each Member State. The term of office of the members of the Committee shall be renewable.*

*2. The Council shall consult the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors to which the activities of the Community are of concern.*

The text of Articles 257-262 (op. cit.) indicates that the candidates for membership be fully representative of Member State society; this requirement is taken to mean

employers, employees, professional workers and craftsmen. These categories are sometimes referred to as Groups<sup>37</sup>.

It has not been possible to fully describe the United Kingdom process in support of appointments to the Economic and Social Committee. However, a written reply from Sir Stephen Wall of the European Secretariat of the Cabinet Office provides some insights into the process as follows: '*... applications should be sent to the Department of Trade and Industry for Group I (employers) and Group II (workers), or to the Foreign Office for Group III (various interests/civil society) ...*' and '*Outside organisations (including the CBI and TUC) select candidates they wish to put forward, or individuals apply to the DTI or the Foreign and Commonwealth Office. The Foreign Secretary and then the Prime Minister must approve nominations ...*' Approved nominations then go forward for confirmation of appointment by the Council of Ministers.

#### 2.2.3.5 Summary

The above text has highlighted the processes by which people become members of the Commission, the Council, the European Parliament and of the Economic and Social Committee, the four EC institutions identified in Table 2.7 as those institutions involved with the EC internal market technical legislative process.

A useful division of the four EC institutions can be made based on the processes of membership. Members of each of the European Parliament and of Council are elected, directly or indirectly, by the citizens of the Member States. Within the Consolidated Version of the Treaty Establishing the European Community (op. cit.) no caveats concerning candidates for election, nor the allegiances of those elected, are specified. For Commissioners, appointees, the Treaty (op. cit.) lays down that they should be chosen on the grounds of their general competence and independence. For members of the Economic and Social Committee, again appointees, the Treaty (op. cit.) requires that the members not be bound by any mandatory instructions, that they shall be completely

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<sup>37</sup> The Members of the ESC are sometimes seen as members of groups within the ESC based on the sector of society that they are representing. When such references are made then Group I are employers, Group II are trade unionists/workers and Group III are professional workers and craftsmen/other interests. Bainbridge T, 1998, The Penguin Companion to EUROPEAN UNION, Second Edition, Penguin, London

independent and that the composition of the Committee shall take account of the need to ensure adequate representation of the various categories of economic and social activity.

#### 2.2.4 LANGUAGES OF THE EUROPEAN UNION

At the commencement of this research there was no preconception that language was a major issue to the EC internal market technical legislative process. It was nevertheless recognised that the rich diversity of European Union languages could carry a significant burden of costs, in both time and money, to the legislative process. Any cost burden incurred in the management of European Community affairs being an inevitable outcome of the recognition, within successive treaties, of Member States' own language traditions.

Section 1.2 makes it clear that this thesis is not a legal analysis of the EC internal market technical legislative process nor is it a legal analysis of other aspects of the Treaty. This thesis is concerned with the management of engagement with a process. Management of engagement with a process can only be achieved when the target process is known. The top-level description of this process appears in legal documents. An understanding of the languages to be accommodated by the EC internal market technical legislative process is to be obtained from a study of the treaties. The preliminary, somewhat cursory, study of the Treaty<sup>38</sup> undertaken to establish the languages to be accommodated, revealed that there are two different processes each establishing a set of languages with which the EC institutions are required to have competence.

Language in itself was not initially seen as an EC internal market technical legislative process issue other than the associated cost burdens to deal with a multiplicity of languages. The incidental finding that there are two routes by which the language competence of EC institutions is determined was seen as an EC internal market technical legislative process issue that should be investigated further. This investigation led to a broader investigation of the treatment of languages by the EC institutions.

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<sup>38</sup> N.5 above



The literature search identified two strands to the use of language within the European Union and its institutions. The first strand, the authentic languages<sup>39</sup> of the treaties, are specified within the treaties. The second strand, official languages and working languages, are not specified directly within the treaties but instead are determined by Council. These two strands to the use of language will be considered separately.

During the latter stages of the preparation of this thesis the EU was enlarged from fifteen to twenty five Member States, with effect from 1<sup>st</sup> May 2004. One of the effects of this enlargement was the establishment of nine additional authentic languages and nine additional official languages and working languages of the EU. These additional languages are: Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovene.

The discussion and analysis in Sections 2.2.4.1 – 2.2.4.3 are based on events that occurred prior to the May 2004 enlargement. Full recognition of the existence of the additional languages is acknowledged. In the interests of clarity within this thesis, the subsequent references to and discussion about languages of the EU and the problems that have been identified is restricted to the situation as it existed prior to the May 2004 EU expansion except where specifically noted.

Initially it may seem unclear as to why the use of language within the EU is relevant to a critical review of the EC internal market technical legislative process. The following sections demonstrate how the language provisions, distributed as they are through the Treaties, contribute to a lack of clarity and also how the EC institutions fail to act in a manner that is both consistent and in accordance with agreements. Each of these situations provides evidence that is drawn upon in later Chapters.

#### 2.2.4.1 Authentic languages of the treaties

From the outset of this discussion it is helpful to understand what is meant by the phrase ‘authentic languages of the treaties’. An extract from Article 100 of the Treaty establishing the European Coal and Steel Community<sup>40</sup> is reproduced below:

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<sup>39</sup> Hartley (2003) describes authentic languages by stating that Treaties are ‘authentic in the official languages of all of the Member States’. See also Section 2.2.4.1

<sup>40</sup> N.1 above

*Article 100(Extract)*

*This Treaty, drawn up in a single original, shall be deposited in the archives of the Government of the French Republic, which shall transmit a certified copy thereof to each of the Governments of the other signatory States.*

The implication of this statement would appear to be that there is only a single language Treaty original (French), it is unclear from the above extract if the certified copies are in French or in some other language for each of the signatory States. No evidence has been found in the literature search to suggest that this lack of clarity has contributed either directly or indirectly to any particular problems related to the application of this Treaty.

The Treaty establishing the European Economic Community<sup>41</sup> introduced a rather different specification of 'authentic languages'. For ease of reference the full text of Article 248 of the Treaty of Rome is reproduced below:

*Article 248*

*This Treaty, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.*

There were six founding Member States of the EEC yet only four authentic languages are identified in the above quotation. Each of the other two founding Member States uses more than one of the authentic languages. Belgium uses Dutch, French and German in different geographical regions (Roney, 1998) and Luxembourg uses French for administrative purposes and German for the press and commerce (op. cit.).

The expansion of the original EEC of six Member States into what had become, by April 2004, the EU of fifteen Member States was achieved via four Treaties of Accession. These four Treaties, together with Council Decisions rescinding the authenticity of the Norwegian text, added eight authentic languages. These Treaties, their references and the added authentic languages are summarised in Table 2.12

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<sup>41</sup> N.2 above

**Table 2.12 Authentic languages of Treaties**

<b>Treaty</b>	<b>Authentic Languages of Treaty</b>
Treaty of Paris <sup>42</sup>	French
Treaty of Rome <sup>43</sup>	Dutch, French, German & Italian
Treaty of Accession <sup>44</sup>	Addition of Danish, English, Irish & Norwegian
Council Decision <sup>45</sup>	Removal of Norwegian
Treaty of Accession <sup>46</sup>	Addition of Greek
Treaty of Accession <sup>47</sup>	Addition of Portuguese & Spanish
Treaty of Accession <sup>48</sup>	Addition of Finnish, Norwegian and Swedish
Council Decision <sup>49</sup>	Removal of Norwegian
Treaty of Amsterdam <sup>50</sup>	Re-statement of authentic languages
Treaty of Nice <sup>51</sup>	Re-statement of authentic languages

<sup>42</sup> N.1 above<sup>43</sup> N.3 above<sup>44</sup> Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands (Member States of the European Communities), the Kingdom of Denmark, Eire, the Kingdom of Norway, the United Kingdom, concerning the accession to the European Economic Community and the European Atomic Energy Community by the Kingdom of Denmark, Eire, the Kingdom of Norway, the United Kingdom, OJ 1972 L 73/5-11 (In French)<sup>45</sup> Council decision of the European Communities of 1 January 1973 adjusting the instruments concerning the accession of new Member States to the European Communities, OJ 1973 L 2/1-11<sup>46</sup> Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Denmark, Eire, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Kingdom of Norway, the United Kingdom (Member States of the European Communities) and the Hellenic Republic concerning the accession of the Hellenic Republic to the European Economic Community and the European Atomic Energy Community, OJ 1979 L 291/9-16<sup>47</sup> Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Denmark, Eire, the French Republic, the Hellenic Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, and the United Kingdom (Member States of the European Communities) and the Kingdom of Spain and the Portuguese Republic concerning the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and the European Atomic Energy Community, OJ 1985 L 302/9-22<sup>48</sup> Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Denmark, Eire, the French Republic, the Hellenic Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Portuguese Republic, the Kingdom of the Netherlands, the Kingdom of Spain, and the United Kingdom (Member States of the European Communities) and the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, OJ 1994 C 241/9-20<sup>49</sup> Decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union (95/1/EC, Euratom, ECSC), OJ 1995 L 1/1-13<sup>50</sup> N.6 above<sup>51</sup> N.4 above

Article 248 of the original Treaty of Rome<sup>52</sup> has been superseded by the provisions of the Treaty of Amsterdam<sup>53</sup> and became Article 314 of the Consolidated Version of the Treaty Establishing the European Community<sup>54</sup>, a provision that was unchanged by the Treaty of Nice<sup>55</sup>. Article 314<sup>56</sup> confirms the authenticity of this revised Treaty of Rome in twelve languages. The text of extracts from Article 314 are reproduced below:

*Article 314 (Extracts)*

*This treaty, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.*

*Pursuant to the Accession Treaties, the Danish, English, Finnish, Greek, Irish, Portuguese, Spanish and Swedish versions of this Treaty shall also be authentic.*

In summary the authentic languages of the EU of fifteen Member States, enshrined in the Treaty of Nice are, in alphabetical order: Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish.

#### 2.2.4.2 Official languages and working languages

It is of interest to note that Article 217 of the Treaty of Rome<sup>57</sup> provides for the Council to determine the rules governing the languages of the institutions of the EEC. The text of Article 217 of the Treaty of Rome (op. cit.) is reproduced below:

*Article 217*

*The rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the rules of procedure of the Court of Justice, be determined by the Council, acting unanimously.*

It is evident from the above text that power to determine the languages of the Community institutions rests with the Council. This power was first exercised through

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<sup>52</sup> N.3 above

<sup>53</sup> N.6 above

<sup>54</sup> N.7 above

<sup>55</sup> N.4 above

<sup>56</sup> N.5 above

<sup>57</sup> N.3 above

Council Regulation 1<sup>58</sup> and specified Dutch, French, German and Italian to be the official languages and working languages of the Community institutions.

Following each of the Treaties of Accession that gave rise to an expansion of the EEC/EC there was a corresponding Council Act or Decision that modified the list of official languages and working languages of the EEC. This sequence of changes is summarised in Table 2.13

**Table 2.13 Official languages and working languages**

<b>Authority</b>	<b>Official languages and working languages</b>
Council Regulation No 1 of 15 April 1958 <sup>59</sup>	Dutch, French, German & Italian
Act concerning accession and adaptation of the treaties <sup>60</sup>	Addition of Danish, English & Norwegian
Council Decision of the European Communities of 1 January 1973 adjusting the documents concerning the accession of the new Member States to the European Communities <sup>61</sup>	Removal of Norwegian
Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the treaties <sup>62</sup>	Addition of Greek
Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the treaties <sup>63</sup>	Addition of Portuguese & Spanish
Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the treaties <sup>64</sup>	Addition of Finnish, Norwegian and Swedish
Decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union <sup>65</sup>	Removal of Norwegian

<sup>58</sup> Reglement no. 1 portant fixation du regime linguistique de la Communauté Economique Européenne, OJ 17/385-386 (In French)

<sup>59</sup> N.58 above

<sup>60</sup> Acte relatif aux conditions d'adhésion et aux adaptations des traités, OJ1972 L 73/122

<sup>61</sup> N.45 above

<sup>62</sup> Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the Treaties, OJ 1979 L 22/113

<sup>63</sup> Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties, OJ 1985 L Series Number 302/242

<sup>64</sup> N.48 above

<sup>65</sup> N.49 above

Article 217 of the original Treaty of Rome<sup>66</sup> has been superseded by the provisions of the Treaty of Amsterdam<sup>67</sup> and became Article 290 of the Consolidated Version of the Treaty Establishing the European Community<sup>68</sup>. The Treaty of Nice<sup>69</sup> made, what is for this research, the minor change that substituted the word 'statute' for 'rules of procedure'. There has been no change of authority to specify the official languages and working languages of the EU/EC since the Treaty of Rome<sup>70</sup> – this authority rests with Council acting unanimously.

In summary, the EU/EC of fifteen Member States had eleven official languages and working languages authorised by Council, these languages are, in alphabetical order in English: Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish.

#### 2.2.4.3 A complication

In the context of language, the Treaty of Rome (op. cit.), as updated by the Treaty of Nice<sup>71</sup> has two other important changes. The first change was introduced by Article 2 (11) of the Treaty of Amsterdam<sup>72</sup> and added a new paragraph to Article 21 of the revised Treaty of Rome<sup>73</sup>. The text of this new paragraph is reproduced below:

#### *Article 21 (Extract)*

*Every citizen of the Union may write to any of the institutions or bodies referred to in this Article [21] or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language.*

The second change was introduced by Article 6 (81) of the Treaty of Amsterdam<sup>74</sup>, this added a new paragraph to Article 314 of the Consolidated Version of the Treaty Establishing the European Community<sup>75</sup> whereby Danish, English, Finnish, Greek, Irish, Portuguese, Spanish and Swedish were added to the list of authentic languages. This change was maintained by the Treaty of Nice<sup>76</sup>.

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<sup>66</sup> N.3 above

<sup>67</sup> N.6 above

<sup>68</sup> N.7 above

<sup>69</sup> N.4 above

<sup>70</sup> N.3 above

<sup>71</sup> N.4 above

<sup>72</sup> N.6 above

<sup>73</sup> N.3 above

<sup>74</sup> N.6 above

<sup>75</sup> N.7 above

<sup>76</sup> N.4 above

This new paragraph appears, at least in part, to have overridden the power invested in Council to determine official languages and working languages of the Community institutions. Utilising their power, Council<sup>77</sup> has identified eleven official languages and working languages for the Community institutions. The addition to Article 21 within the revised Treaty<sup>78</sup> with its links to Article 314 now requires these same Community institutions to at least be able to communicate beyond their institutional boundaries in the eleven official languages and working languages plus Irish.

A check by telephone was made with the Representation of the Commission in London, with Mr I. Barker of their Policy Unit on 7 December 1998, to determine if the Commission was already aware of the apparent discrepancy in language provision. It was clear from Mr Barker's response that the Commission in London was not aware of this discrepancy and their immediate reaction was one of concern as to how their translation service would deal with it. No concern was expressed that the Treaty was now less than clear and no undertaking was given that the discrepancy brought to their attention would be further investigated and action taken.

Similarly an enquiry was made by telephone to the Irish Embassy in London on 5 March 2005 to determine if the apparent changes to the status of Irish as a European Union language has, or was seen as likely to cause, any problems. The official<sup>79</sup> to whom this author spoke was neither aware of any problems to date nor expecting any to arise.

Given that the Treaties now require that the institutions shall be able to communicate to the citizens of the Union in any of twelve languages a check was made of various institution websites to see what languages were fully served. The results of this investigation, carried out on 9 June 2000, and again on 11 December 2003, are set out in Table 2.14

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<sup>77</sup> N.48 above

<sup>78</sup> N.5 above

<sup>79</sup> Beyond reference to the 'Information Unit' no contact details are available.

**Table 2.14 Languages available on EC institution websites**

<b>EC Institution</b>	<b>Website address</b>	<b>Number of Languages</b>	<b>'Missing' Language</b>
Commission	<a href="http://europa.eu.int">http://europa.eu.int</a>	11	Irish
European Parliament	<a href="http://europarl.eu.int">http://europarl.eu.int</a>	11	Irish
Council	<a href="http://ue.eu.int">http://ue.eu.int</a>	11	Irish
Economic and Social Committee	<a href="http://esc.eu.int">http://esc.eu.int</a>	11	Irish

It is of interest to note that each of the four EC institutions listed in Table 2.14 provides access to its website in only eleven languages, in each case the 'missing' language being Irish. This omission suggests that each of the four EC institutions were either not prompted to do anything by the Representation of the Commission in London or have chosen to ignore a specific provision of the Consolidated Version of the Treaty Establishing the European Community (op. cit.) or do not see websites as being required to meet the provisions of Article 21 of the Treaty. This researcher has not been able to test the application of Article 21 by writing to each, or indeed any, of the four institutions in Irish.

It is perhaps of significance to note that at [www.europa.eu.int/eur-lex/en/index.htm](http://www.europa.eu.int/eur-lex/en/index.htm), accessed 25 June 2003 under 'News', there existed the comment dated 16/05/03 'Online access to the Treaties in Irish'. There was no indication as to why this news item had been included. No other information has been found that explains why this change was introduced 6 years after the requirement appears to have been established. The action may have been an attempt to resolve the language difficulty for the existing Member States before the accession of ten new Member States, and possibly their official languages, in May 2004.

The Manual of Precedents (Council, 2001a) provides for an order of languages for Acts falling under secondary legislation. The order of languages, together with their approved abbreviations, reproduced from the Manual of Precedents (op. cit) is provided in Table 2.15



**Table 2.15 List of Member States with their national language and its abbreviation**

	<i>Member State/Language</i>	<i>Abbreviation</i>
1	<i>Spain (castellano)</i>	<i>es</i>
2	<i>Denmark (dansk)</i>	<i>dk</i>
3	<i>Germany (Deutsch)</i>	<i>d</i>
4	<i>Greece (ellinika)</i>	<i>gr</i>
5	<i>United Kingdom (English)</i>	<i>en</i>
6	<i>France (français)</i>	<i>f</i>
7	<i>Italy (italiano)</i>	<i>i</i>
8	<i>Dutch (Nederlands)</i>	<i>nl</i>
9	<i>Portugal (português)</i>	<i>pt</i>
10	<i>Finland (suomi)</i>	<i>fin</i>
11	<i>Sweden (svenska)</i>	<i>sv</i>

Two interim conclusions can be drawn from Table 2.15. The first interim conclusion that may be drawn is that Council, as at May 2001, accepted that there were only eleven official languages and working languages. The second interim conclusion is that Council, i.e. representatives of the Member States, agreed the actual official languages and working languages and their approved abbreviations. Under such circumstances it would seem reasonable to expect that all institutions of the EC would adopt the agreed language abbreviations and order of presentation.

Table 2.16 provides a comparison of official and working languages and their abbreviations as used by the various EC institutions. It may be inferred from this table that of the EC institutions involved with the EC internal market technical legislative process, and the European Court of Justice, none of them comply with the Manual of Precedents (op. cit.) – not even Council itself.

**Table 2.16 Comparison of official and working languages and their abbreviations as used by the various EC institutions**

		Institution	Council	Commission	European Parliament	European Ombudsman	Economic and Social Committee
		Abbreviated web address	ue.eu.int <sup>2</sup>	europa.eu.int <sup>2</sup>	europarl.eu.int <sup>2</sup>	euro-ombudsman.eu.int <sup>2</sup>	esc.eu.int <sup>3</sup>
Language <sup>1</sup>		Abbreviation <sup>1</sup>					
Castellano	Spanish	es	es	es	Espanol	es	es
Dansk	Danish	dk	da	da	Dansk	da	da
Deutsch	German	d	de	de	Deutsch	de	de
Ellinika	Greek	gr	el	el	Ελληνικά	el	el
English	English	en	en	en	English	en	en
Français	French	f	fr	fr	Français	fr	fr
Italiano	Italian	i	it	it	Italiano	it	it
Nederlands	Dutch	nl	nl	nl	Nederlands	nl	nl
Português	Portuguese	p	pt	pt	Português	pt	pt
Suomi	Finish	fin	fi	fi	Suomi	fi	fi
Svenska	Swedish	s	sv	sv	Svenska	sv	sv
Date of web access			30/04/02	30/04/02	30/04/02	30/04/02	12/06/02

Notes:

1. Languages and abbreviations as laid down by Council (2001).
2. Those NOT as laid down by Council are highlighted within the Table.
3. The ESC Home Page also shows twelve language abbreviations corresponding to each of the twelve applicant Member States as referred to in the Treaty of Nice<sup>80</sup>

<sup>80</sup> N.4 above

A reflection on language is provided in the preface by Martin Bangemann, at the time a Vice-President of the Commission with responsibility for industry, to a book by Boman (1991). An extract from this preface is reproduced below:

*'The problem which the languages of the twelve Member States gave and give rise to is still a serious problem within the European Communities. Mutual understanding is further complicated by the national and international abbreviations to such a degree that the contact between the individual Member States often becomes ineffective or impossible.'*

Since the above statement was made the EC has expanded to fifteen Member States, thereby Finnish and Swedish also becoming official languages and working languages of the EC. An already acknowledged problem caused by language diversity may be exacerbated by further expansion of the EC. Bainbridge (1998) makes the comment that:

*'A referendum on membership of the Union in an applicant state would certainly be lost if the electorate were to be informed that their national language was not to be used in the Union institutions.'*

Bainbridge (op. cit.) also states that approximately one third of the Commission staff are engaged on interpretation and translation services and that there are twenty seven languages in use within the European Union as at 1998. From this it is clear that some compromises regarding the use of language within the EU can, and surely must, be achieved.

#### 2.2.4.4 Summary

It appears that up to the very highest levels within the legislative framework of the European Union and its institutions there is a lack of care in the preparation and application of legislation. Primary legislation, the Treaties, appears to be flawed or at least unclear.

The European Committee for Normalisation (CEN) and the European Committee for Electro-technical standardisation (CENELEC) provide good examples of a way forward in this type of multilingual environment. CEN and CENELEC are independent standardisation bodies outside of the set of EC institutions, but they are bodies that have

a special role in support of EC internal market technical legislation. This special role will be discussed more fully in Section 3.3.1, for the present the way that multilingual needs are dealt with is of relevance. All EC, and EFTA, Member States are also Members of CEN and CENELEC through their national standards body, for the United Kingdom this is the British Standards Institution (BSI). The diversity of language within CEN and CENELEC is, therefore, no less extensive than it is within the EC. Within CEN and CENELEC the official languages are restricted to English, French and German (CEN, 1996a, Vol. 2). As one would expect CEN/CENELEC rules exist for the provision of translations of official language texts in other CEN/CENELEC Member languages (CEN, 1996b, Vol. 2) but these translations are under the responsibility of the relevant CEN/CENELEC Member.

There is evidence of unilateral action by EC institutions to alleviate the burden created by the current extensive list of official languages and working languages. The Economic and Social Committee have published a booklet on the Single Market (Economic and Social Committee, 1999), this booklet carries the clear statement '*This publication is available in the following languages: English, French and German.*'. A written enquiry was made to the ESC as to why such documents are not available in all of the official languages. The written reply set out a pragmatic approach to the situation, the relevant extract from the reply is reproduced below:

*A booklet like the one referred to by you is not an official EU-document. It gives a quick overview of some of the topics that we have been working on and those interested in the opinions mentioned in the document can obtain these in any of the 11 official languages. Reducing the number of languages is the only realistic way of preparing "overview"-booklets like the one in question.*

There is a hierarchy to EU/EC legislation, EU primary legislation then EC secondary legislation within which EC internal market legislation is a sub-set. This hierarchy of legislation has similarities to a management hierarchy in an organisation. Within an organisation striving for high quality outputs the concepts of quality start from the top – as strategic objectives (Harvey-Jones, 1993). The achievement of high quality standards is by a 'top down' system rather than a 'bottom up' approach. By analogy lower level EC secondary legislation is unlikely to be of better quality than the controlling EU primary legislation. Any errors, deficiencies or inconsistencies present in the treaties would not set a good example, or provide a good role model, for activities lower down the hierarchy.

Within this section no legal analysis of the status of different languages within the European Union has been attempted. What has been shown is that the Treaty has been written in a manner that allows the establishment of two different sets of language competences for the EC institutions. It has also been shown that the EC institutions involved with the EC internal market technical legislative process do not follow the requirements specified in the Manual of Precedents (Council, 2001a). Each of these two findings is an indicator of the quality of the overall process.

### 2.3 Interactions involving the European Community institutions

The institutions involved with the EC internal market technical legislative process have been established, see Table 2.7. It is now necessary to determine the various interactions involving these institutions. For the purposes of this research the interactions have been divided into three general categories as set out in Table 2.17. It is recognised that there is no formal basis for the interactions that are identified as Category 3 in Table 2.17. It is clear that interactions between the EC institutions and other individuals and organisations take place. When interactions between EC institutions and individuals or organisations are initiated by an institution the interactions may be described as consultation. When interactions are initiated by individuals or by organisations seeking to influence, for their benefit, the outcome of the process these interactions may be described as lobbying. Some illustrations of opportunities for this type of activity are provided within this section.

**Table 2.17 Categories of interactions involving EC institutions**

Category	Description
1.	The formal interactions between the institutions as defined in the primary legislation;
2.	The interactions bounded by the institutions – the internal processes;
3.	The interactions of each institution with Member State governments and with other organisations and/or individuals.

### 2.3.1 THE OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES

It is evident from Table 2.7 that there are four EC institutions involved with the EC internal market technical legislative process. In addition to these four institutions it is convenient to understand the role of the Official Journal of the European Communities (OJEC), created by a Council Decision<sup>81</sup>. The OJEC plays a very straightforward role as the official publication of the EU, a role analogous to that of the London Gazette or the Edinburgh Gazette in the United Kingdom. It is a passive role in that there is no dialogue, or other interaction, with other institutions, organisations or individuals either inside or outside of the EC institutions. The OJEC role is to publish, and thus make publicly available, various texts in the 'C' series<sup>82</sup> and in the 'L' series. Publication in the OJEC is important in that, in many instances, the act of publication determines the date that a given piece of legislation enters into force.

Treaty provisions for the publication of legislation, up to and including those provisions applicable following the entry into force of the Single European Act<sup>83</sup>, are elucidated in Article 191 of the Treaty of Rome<sup>84</sup>. For clarity the text of Article 191 is set out below:

#### *Article 191*

*Regulations shall be published in the Official Journal of the Community. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following their publication. Directives and decisions shall be notified to those to whom they are addressed and shall take effect upon such notification.*

From the above text it can be inferred that there was no requirement to publish the text of directives even though directives are essential to the creation of the EC internal market. Direct access to source EC internal market legislation was not guaranteed to all users. Access to the text of directives improved with the entry into force of the Treaty

<sup>81</sup> Council decision creating the 'Official Journal of the European Communities', OJ 1958 390/58, (In French)

<sup>82</sup> For the purposes of this research the OJ is published in two series. 'The 'L' (Legislation) series contains the texts of all legislative acts of the European Community including Decisions taken by representatives of the governments of member states. The 'C' (Communications series contains a wide range of other range of other material including the texts of legislative proposals from the European Commission, and Opinions thereon delivered by other institutions.'

Bainbridge T, 1998, The Penguin Companion to EUROPEAN UNION, Second Edition, Penguin, London

<sup>83</sup> N.19 above

<sup>84</sup> N.3 above

of Amsterdam<sup>85</sup>. For clarity, and for ease of comparison with the earlier text, the text of Article 254 (2)<sup>86</sup> is reproduced below:

*Article 254 (2)*

*Regulations of the Council and of the Commission, as well as directives of those institutions which are addressed to all Member States, shall be published in the Official Journal of the European Union. They shall enter into force on the date specified in them or, in the absence thereof, on the 20<sup>th</sup> day following that of their publication.*

It would appear to be a fundamental necessity that EC internal market directives be addressed to all Member States and be guaranteed to be available to all. For the first time, from the coming into force of the Treaty of Amsterdam<sup>87</sup>, the EC internal market legislative process requires that the text of directives be published, thereby guaranteeing all users direct access to source legislation. The EEC/EC institutions have taken over 30 years to reach the stage where they guarantee to publish the requirements that they set out for the establishment of the EC internal market.

The OJEC has no other role in the legislative process for EC internal market technical legislation and will not be considered further in this part of the discussion.

One of the minor changes introduced to the Consolidated Version of the Treaty Establishing the Economic Community<sup>88</sup> by Article 2 (38) of the Treaty of Nice<sup>89</sup> was a re-naming of the *Official Journal of the European Communities (OJEC)* to *Official Journal of the European Union (OJEU)*. Hereafter within this text references will be made to the 'Official Journal', in the formal references OJEC and OJEU are used as appropriate. This change of name became effective on 1<sup>st</sup> February 2003 with the issue of OJEU 'C' Series Number 25 and 'L' Series Number 27.

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<sup>85</sup> N.6 above

<sup>86</sup> N.7 above

<sup>87</sup> N.6 above

<sup>88</sup> N.7 above

<sup>89</sup> N.4 above

### 2.3.2 THE FORMAL INTERACTIONS BETWEEN THE INSTITUTIONS AS DEFINED IN THE PRIMARY LEGISLATION (CATEGORY 1).

Reference to Table 2.3 shows, via Article 94<sup>90</sup>, that EC internal market technical legislation shall be introduced by the issue of directives. Directives are defined in Article 249 (op. cit.). The procedure to be followed for the issue of EC internal market directives is that described in Article 251 (op. cit.) amended by the provision of Article 95 (1)(op. cit.) requiring consultation of the Economic and Social Committee. The text of Article 251, as modified by Article 95, is quite complex and an understanding of the process is assisted by reference to Figure 2.1 that has been constructed, by this author, from the text of Article 251.

It can be seen from Figure 2.1 that the overall process from the 'Initiating event' all the way through to meetings of Council and of the European Parliament following any necessary 'Conciliation Meetings' is composed of many steps. The links between the various process steps are quite straightforward but it is necessary to understand where in the process any particular proposal has reached if any statement about the next step is to be made.

However, Figure 2.1 also shows that if the Commission manages, by whatever consultation means are seen as appropriate, to put forward a proposal that is acceptable to each of Council and the European Parliament then a satisfactory outcome, with the proposal being adopted, can occur much earlier in the process.

A letter widely distributed by the United Kingdom Health and Safety Executive in August 1999 includes the following: *'I am sorry to say that my earlier letter does not give a clear picture. It confuses the opinion Council must deliver on the European Parliament's amendments and the position Council will take for conciliation. I am therefore writing again to clarify the process to which ATEX<sup>91</sup> will now be subject. Please accept my apologies for any confusion this may have caused.'* This extract provides a documented illustration of the lack of understanding by officials of a

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<sup>90</sup> N.5 above

<sup>91</sup> Directive 1999/92/EC of the of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (15<sup>th</sup> individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) OJ 2000 L 23/57-64



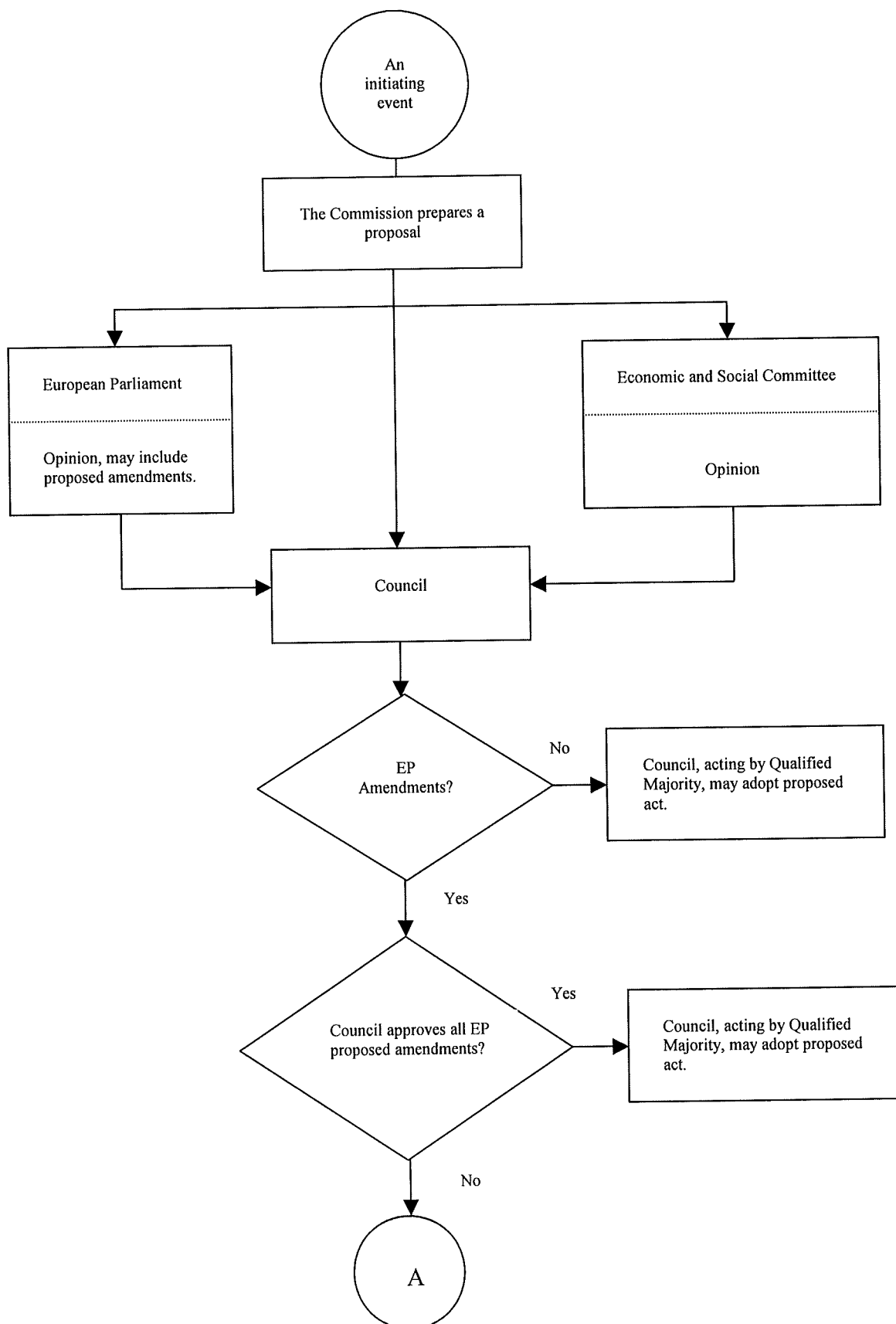
**Figure 2.1 Procedure of Article 251 (Codecision) as modified by Article 95**

Figure 2.1 Continued

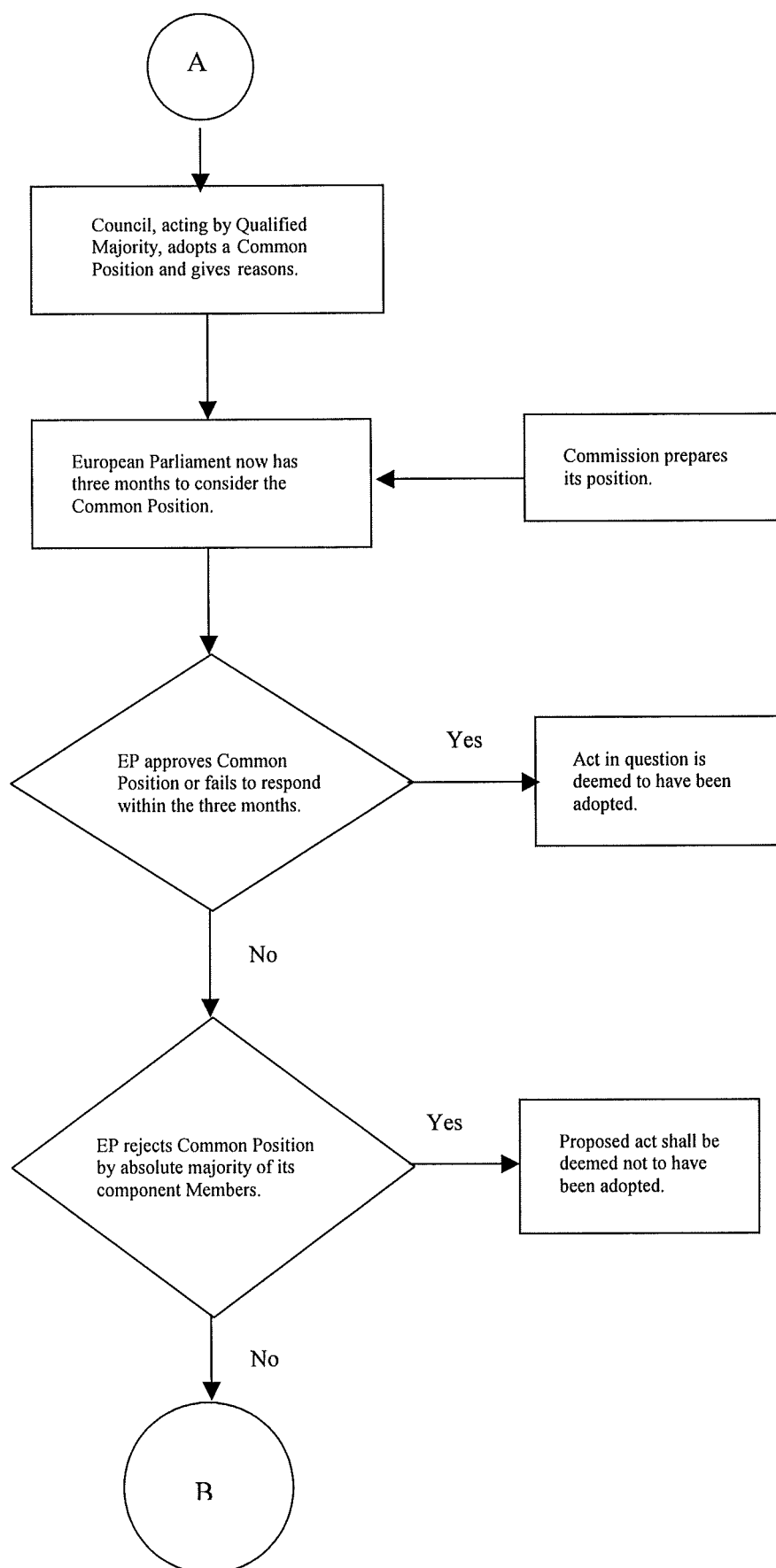


Figure 2.1 Continued

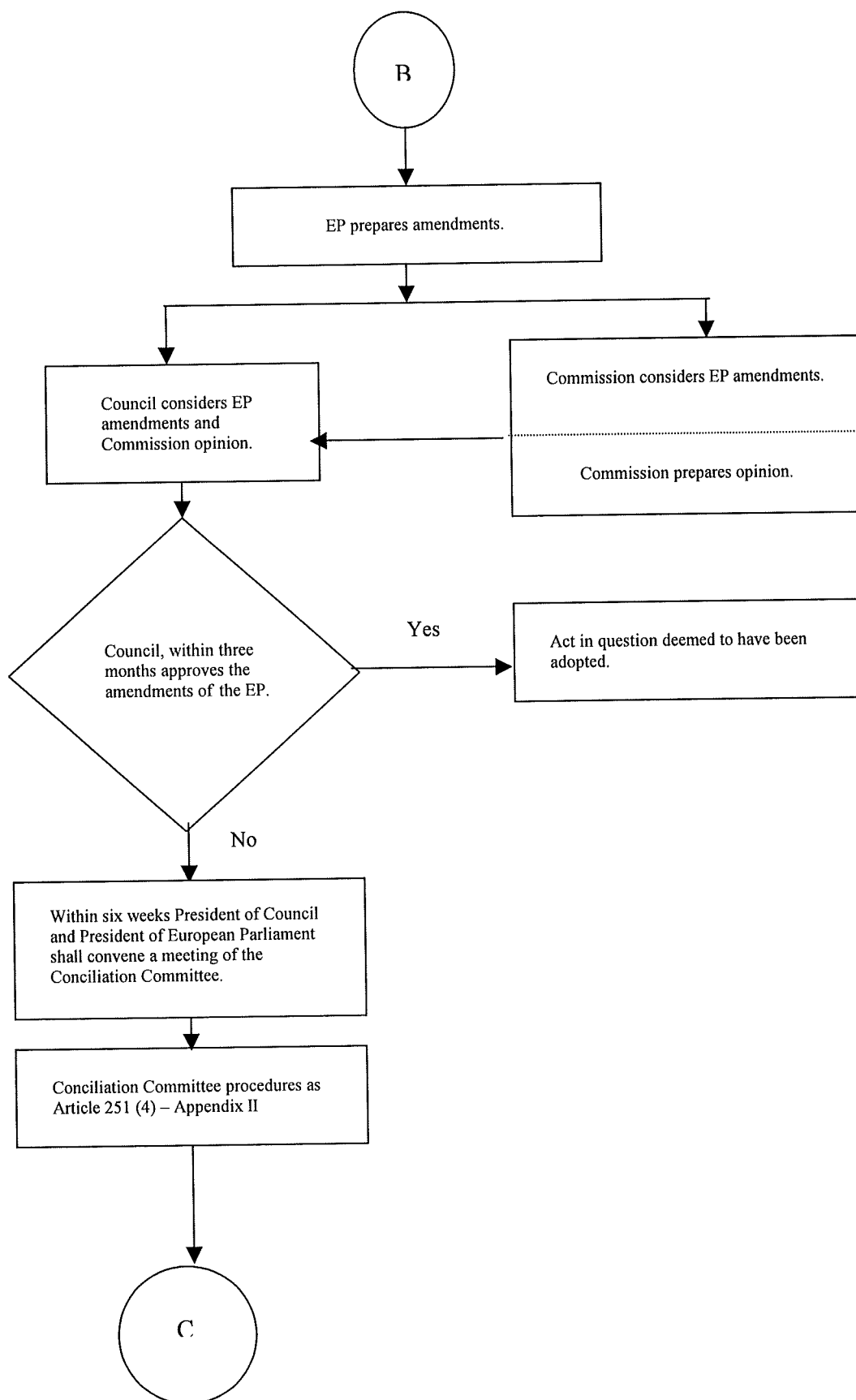
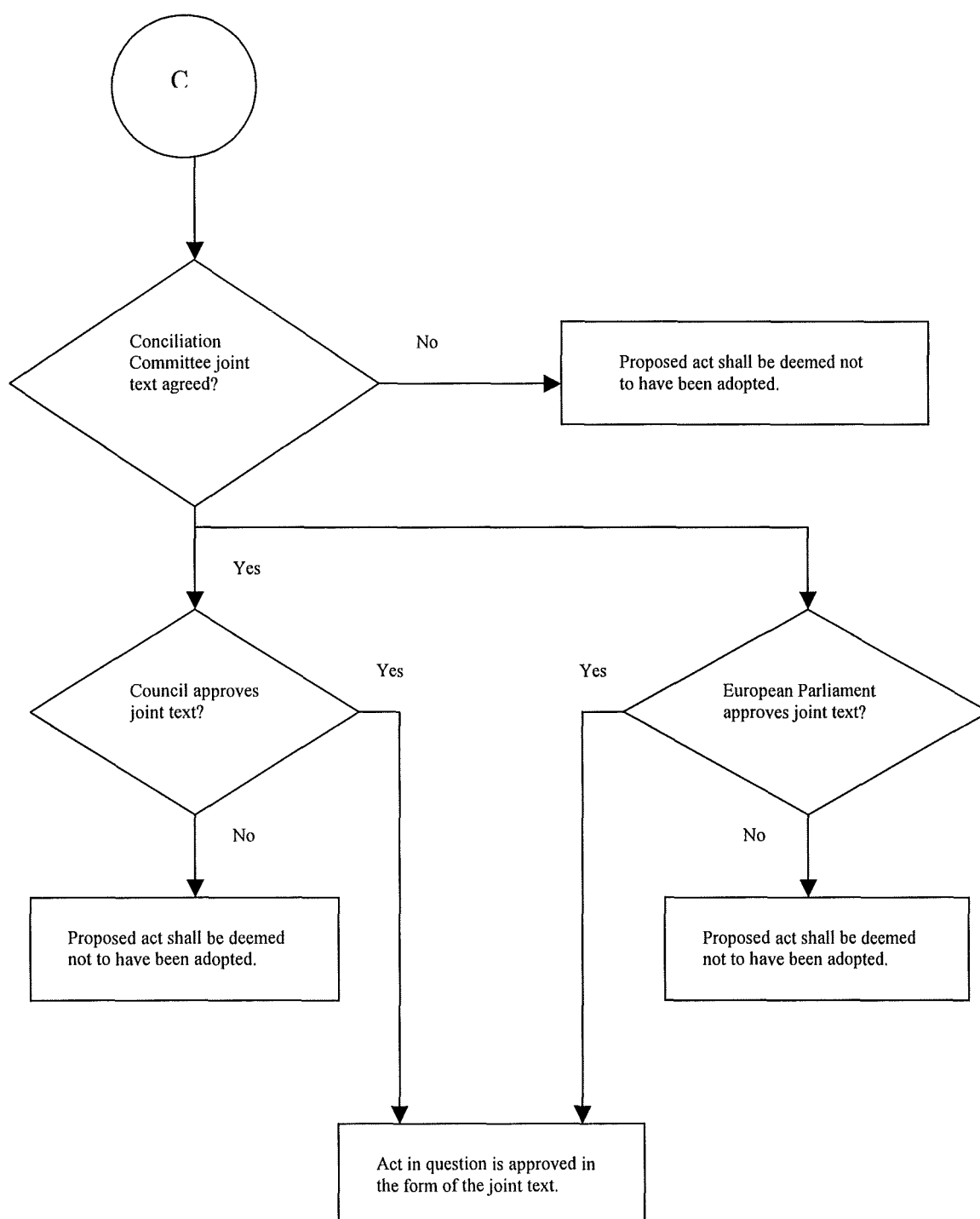


Figure 2.1 Continued



typical Member State of the changes brought about by the Treaty of Amsterdam<sup>92</sup>. Here there is little acknowledgement by officials of a Member State of their need to keep abreast of change of the laws, regulations and internal rules that control their work. An apology regarding their failure to be aware of the rules governing their work was seen by these officials as being all that was required of them. There remains, of course, an expectation that those governed in some way by legislation drafted by these same officials should be both aware of the legislation and expected to comply with it. A simple apology by a member of the public found to be failing to comply with legislation is not normally seen as sufficient.

### 2.3.3 THE INTERACTIONS BOUNDED BY THE INSTITUTIONS – THE INTERNAL PROCESSES (CATEGORY 2).

Within this sub-section, for each of the four EC institutions previously identified as being involved in the EC internal market technical legislative process, two items are established. Together these two items allow an assessment of whether the top level process description, the treaties, requires individual internal EC institution process descriptions and whether any such requirements are met. The first of these items is the authority under which the institutions' various Rules of Procedure have been adopted. The second of these two items being the Rules of Procedure currently in force, together with an outline of the historical development that has culminated in the present situation. For clarity of presentation this information is provided in tabular form in Tables 2.18 to 2.21 for the Commission and for Council and in Tables 2.23 to 2.26 for the European Parliament and for the Economic and Social Committee.

#### 2.3.3.1 The Commission

It is important to recognise here that within the Treaty<sup>93</sup> references to the Commission are taken to be references to the college of Commissioners. As a result of this interpretation the Commission Rules of Procedure (Commission, 2000) relate only to the college of Commissioners and not to the whole organisation colloquially known as the Commission. Within the Rules of Procedure (op. cit.) there is an open reference

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<sup>92</sup> N.6 above

<sup>93</sup> N.5 above



direct enquiries for references to any additional rules have each failed to gain any response then the commitment of the Commission, at all levels of the organisation, to the 'Code of Good Administrative Behaviour' is in doubt.

**Table 2.19 Historical development of the Commission's Rules of Procedure**

What was adopted	Quoted authority to adopt	Reference
Commission Decision amending its Rules of Procedure	Article 218(2) <sup>99</sup>	Commission Decision <sup>100</sup> (NB. There was no direct reference to the document being amended.)
Rules of Procedure	Article 218(2)(op. cit.)	Commission, 2000b

### 2.3.3.2 The Council

For the purposes of this section of the research the provenance of Council's Rules of Procedure is of interest rather than the detail contained within the Rules of Procedure. No evidence has been found of unpublished Council Rules of Procedure. Thus it is assumed that Council Rules of Procedure adopted on 24 July 1979 were the first such Rules of Procedure. The Treaty of Paris (ECSC)<sup>101</sup> and the Treaties of Rome (EEC and Euratom)<sup>102</sup> pre-date the Merger Treaty<sup>103</sup> by sixteen and ten years respectively. Each of these three treaties contain the imperative '*Council shall adopt its rules of procedure.*' It is not until a further twelve years after the Merger Treaty that Council demonstrates compliance with a provision of the treaties. No explanation for this substantial delay is available. From the perspective of an individual citizen of the EU such delays in taking action, even though time limits for compliance were not specified in the treaties, demonstrate a low regard for the provisions of the treaties, i.e. primary EU law, by Council.

Notwithstanding the above criticism of the delay in adoption of the Council Rules of Procedure a study of the current Rules of Procedure (Council, 1993, 1995) shows them to be quite detailed and generally written in the imperative form. The previous

<sup>99</sup> N.7 above

<sup>100</sup> Commission Decision of 17 October 2000 amending its Rules of Procedure (2000/633/EC), OJ 2000 L Series Number 267/63-66

<sup>101</sup> N.1 above

<sup>102</sup> N.3 and N.17 above

<sup>103</sup> N.18 above

paragraph suggests that Council have exhibited a low regard, over a long period, for primary law. With Council exhibiting such low regard for primary law there can be no certainty that Council will rigorously adhere to other rules, perhaps with less authority than primary law, that are intended to govern Council's actions. The rules are such that

**Table 2.20 Authority for creation of the Rules of Procedure of the Council**

<b>Treaty</b>	<b>Article</b>	<b>Requirement to Act</b>
[Treaty of Paris] <sup>104</sup> (ECSC)	30	'The Council shall adopt its rules of procedure.'
[Treaty of Rome] <sup>105</sup> (EEC)	151	'The Council shall adopt its rules of procedure.'
[Treaty of Rome] <sup>106</sup> (Euratom)	121	'The Council shall adopt its rules of procedure.'
[Merger Treaty] <sup>107</sup>	5 7	'The Council shall adopt its rules of procedure.' Repeals [Treaty of Rome] (EEC) Article 151, [Treaty of Paris] (ECSC) Article 30 and [Treaty of Rome] (Euratom) Article 121.
[Maastricht Treaty] <sup>108</sup>	G 46, H 10, I 6	[Treaty of Rome] (EEC) Article 151, [Treaty of Rome] (Euratom) Article 121 and [Treaty of Paris] Article 30 insertions within which each (3) states: 'The Council shall adopt its rules of procedure.'
[Treaty of Amsterdam] <sup>109</sup>	2, 3, 4	[Treaty of Rome] (EEC) Article 151, [Treaty of Rome] (Euratom) Article 121 and [Treaty of Paris] (ECSC) Article 30 replacements within which each (3) states: 'The Council shall adopt its rules of procedure.'
[Treaty of Nice] <sup>110</sup>		No change to existing provisions.

researchers have limited access to information on the actual workings of Council<sup>111</sup>. As a result external quality audits of Council's workings are restricted in scope and rely on assessment methods that can be conducted by a review of the output from Council.

<sup>104</sup> N.1 above

<sup>105</sup> N.3 above

<sup>106</sup> N.17 above

<sup>107</sup> N.18 above

<sup>108</sup> N.20 above

<sup>109</sup> N.6 above

<sup>110</sup> N.4 above

<sup>111</sup> This author is aware of the existence of a body of European Court of Justice case law on access to information, transparency, but detailed discussion of it is outside the scope of this research.



**Table 2.21 Historical development of the Council's Rules of Procedure**

What was adopted	Quoted Authority to adopt	Reference
Council rules of procedure adopted by Council on 24 July 1979	[Merger Treaty] <sup>112</sup> , Article 5	Council, 1979
Council, amendment of the Council's rules of procedure adopted by Council on 20 July 1987	[Merger Treaty], Article 5 (op. cit.)	Council, 1987
Council Decision of 6 December 1993 adopting the Council's Rules of Procedure <sup>113</sup>	[Treaty of Rome] <sup>114</sup> (EEC) Article 151 (3), [Treaty of Paris] <sup>115</sup> (ECSC) Article 30 (3) and [Treaty of Rome] <sup>116</sup> (Euratom) Article 121 (3).	
Council Decision of 6 February 1995 amending the Council Decision of 6 December 1993 adopting the Council's Rules of Procedure, following the accession of Austria, Finland and Sweden <sup>117</sup>	[Treaty of Rome] <sup>118</sup> (EEC) Article 151 (3), [Treaty of Paris] <sup>119</sup> (ECSC) Article 30 (3) and [Treaty of Rome] <sup>120</sup> (Euratom) Article 121 (3).	

A Council Decision known as the Modules Decision<sup>121</sup> appears to lay down a series of quality assessment modules to be applied to all EC internal market new approach technical harmonisation directives. It is clear both from the text and context of this Council Decision that it is directed at the drafters of EC internal market new approach technical harmonisation directives, no other group of people is in a position to directly make use of this Council Decision. The Council Decision, if implemented as written, would apply the same regime of quality assessment modules to all EC internal market

<sup>112</sup> N.18 above

<sup>113</sup> Council Decision of 6 December 1993 adopting the Council's Rules of Procedure (93/662/EC), OJ 1993 L 304

<sup>114</sup> N.3 above

<sup>115</sup> N.1 above

<sup>116</sup> N.17 above

<sup>117</sup> Council Decision of 6 February 1995 amending the Council Decision of 6 December 1993 adopting the Council's Rules of Procedure, following the accession of Austria, Finland and Sweden (95/24/EC, Euratom, ECSC), OJ 1995 L 31/14

<sup>118</sup> N.3 above

<sup>119</sup> N.1 above

<sup>120</sup> N.17 above

<sup>121</sup> Council Decision of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives (93/465/EEC)[Modules Decision], OJ 1993 L 220/23-39

new approach technical harmonisation directives while allowing for minor deviations to the quality assessment regimes where such deviations can be, and are, expressly justified in individual EC internal market new approach technical harmonisation directives. From a manufacturing perspective the application of the Council Decision in the way that it is written would be of benefit. This Council Decision fails to comply with the requirements of the Treaties in force by not being addressed to anyone. As a result, the Council Decision is seen by Commission officials, i.e those people who have drafted and continue to draft directives, as not applying to them. To check if this error of omission by Council was a rare aberration or was perhaps common practice the first five Council Decisions published in the Official Journal for each of the three years available at the time, 1996, 1997 and 1998 were investigated to see to whom they were addressed. The results of this investigation are given in Table 2.22

**Table 2.22 A review of addressees of Council Decisions**

<b>Council Decision</b>	<b>Official Journal of the European Communities Reference</b>	<b>To Whom Addressed</b>
96/41/EC	L Series Number 12, 1996, p13	Not addressed
96/88/EC	L Series Number 21, 1996, p47	Not addressed
96/89/EC	L Series Number 21, 1996, p66	Not addressed
96/90/EC	L Series Number 21, 1996, p67	United Kingdom
96/91/EC	L Series Number 21, 1996, p69	Not addressed
97/7/EC	L Series Number 3, 1997, p6	The Member States
97/8/EC	L Series Number 3, 1997, p7	The Member States
97/9/EC	L Series Number 3, 1997, p8	Not addressed
97/15/EC	L Series Number 6, 1997, p25	Not addressed
97/16/EC	L Series Number 6, 1997, p32	Not addressed
98/1/EC	L Series Number 1, 1998 p6	Not addressed
98/2/EC	L Series Number 1, 1998 p8	Sweden
98/3/EC	L Series Number 1, 1998 p9	The Member States
98/17/EC	L Series Number 7, 1998 p27	Not addressed
98/18/EC	L Series Number 7, 1998 p37	Not addressed

A review of the data of Table 2.22 shows that out of the total of fifteen Council Decisions reviewed only five are addressed, thus leaving ten out of the total of fifteen failing to meet a simple requirement specified in the treaties, Article 249<sup>122</sup>.

<sup>122</sup> N.5 above

A later review of the first five Council Decisions published in the Official Journal for each of 2001, 2002 and 2003 revealed that only three out of the fifteen Council Decisions were addressed. This result suggests there had been no improvement in Council's compliance with the requirement of Article 249 (op. cit.). A similar review of Commission Decisions for the same six years showed that all thirty of the decisions were properly addressed.

The preceding paragraphs, together with the data within Table 2.22, suggest that Council is not assiduous in its application of primary law. Two possible explanations are offered; the first is a simple failure of procedure based perhaps on a lack of knowledge by Council and its Secretariat. The second possible explanation is a disregard for the provisions of those parts of the treaties that apply to Council. A possible response from Council, if challenged, might be that the addressees are self evident from the title and application of the Council Decisions. This author would have some sympathy with any such response but would remind Council that the Treaty (op. cit.) does not provide discretion even in the case of the perception of self evident addressees. The relevant clause of Article 249 (op. cit.) reads: '*A decision shall be binding in its entirety upon those to whom it is addressed.*' If a Council Decision is not addressed it is not binding on anyone and brings into question why it was produced at all.

The Commission have been shown to be operating correctly in their addressing of decisions, however the Commission appears to be guilty of failing in its enforcement role. Hartley (2003) draws to our attention the lack of discretion available to the Commission in the application of Article 211<sup>123</sup> which requires that the Commission shall: '*ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied*'. Hartley (2003) also notes that any Commission action in its enforcement role would only be initiated after careful consideration and possibly lengthy investigation. It is perhaps reasonable that single aberrations by Council in failing to address a decision may not cause the Commission to act. It then becomes a moot point about when Council's failures become systematic, possibly deliberate, failures to comply with treaty obligations that could be expected to initiate enforcement action by the Commission.

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<sup>123</sup> N.5 above

Whatever the reason, the effect of such failure to comply with the treaties can cause unnecessary difficulty to those outside of the EC institutions, e.g. manufacturing industry as outlined above.

### 2.3.3.3 The European Parliament

At the time of writing (August 2004) the most recent European Parliamentary elections were held throughout the European Union in June 2004. The Members of the European Parliament (MEP) duly elected in the various Member States were also declared in June 2004. Following the declaration of the MEPs various administrative procedures were carried out to fully establish the new European Parliament. At no time has there been a treaty obligation to publish the European Parliament Rules of Procedure.

**Table 2.23 Authority for creation of the Rules of Procedure of the European Parliament**

<b>Treaty</b>	<b>Article</b>	<b>Requirement to Act</b>
[Treaty of Paris] <sup>124</sup> (ECSC)	25	'The Assembly shall adopt its rules of procedure acting by a majority of its members.'
[Treaty of Rome] <sup>125</sup> (EEC)	142	'The Assembly shall adopt its rules of procedure acting by a majority of its members.'
[Treaty of Rome] <sup>126</sup> (Euratom)	112	'The Assembly shall adopt its rules of procedure acting by a majority of its members.'
[Treaty of Amsterdam] <sup>127</sup>	Annex B	No change other than within 'Consolidated version of the Treaty Establishing the Economic Community' Article 142 becomes Article 199.
[Treaty of Nice] <sup>128</sup>		No change to existing provisions.

<sup>124</sup> N.1 above

<sup>125</sup> N.3 above

<sup>126</sup> N.17 above

<sup>127</sup> N.6 above

<sup>128</sup> N.4 above

**Table 2.24 Historical development of the European Parliament's Rules of Procedure**

What was adopted	Quoted Authority to adopt	Reference
1 <sup>st</sup> to 3 <sup>rd</sup> Editions		None found
4 <sup>th</sup> Edition June 1987	None included, nor is any record of their adoption provided.	European Parliament, 1987
5 <sup>th</sup> to 13 <sup>th</sup> Editions		None found
14 <sup>th</sup> Edition June 1999	None included, nor is any record of their adoption provided.	European Parliament, 1999a, b

#### 2.3.3.4 The Economic and Social Committee

From Table 2.25 it should be noted that since the coming into force of the Treaty on European Union<sup>129</sup> there has been no requirement for Council to approve the ESC Rules of Procedure. Table 2.26 shows, briefly, the historical development of the ESC Rules of Procedure. At no time has there been a treaty obligation to publish the ESC Rules of Procedure.

**Table 2.25 Authority for creation of the Rules of Procedure of the Economic and Social Committee**

Treaty	Article	Requirement to Act
[Treaty of Paris] <sup>130</sup> (ECSC)	18	'A Consultative Committee shall be attached to the High Authority.' 'The Committee shall adopt its rules of procedure.'
[Treaty of Rome] <sup>131</sup> (EEC)	196	'It shall adopt its rules of procedure and shall submit them to the Council for its approval, which must be unanimous.'
[Treaty of Rome] <sup>132</sup> (Euratom)	168	'It shall adopt its rules of procedure and shall submit them to the Council for its approval, which must be unanimous.'
[Maastricht Treaty] <sup>133</sup> [Treaty on European Union]	G 65, I 8	[Treaty of Rome] (EEC) Article 196 and [Treaty of Rome] (Euratom) Article 168 replacements within which each paragraph (2) states: 'It shall adopt its rules of procedure.'
[Treaty of Amsterdam] <sup>134</sup>	Annex B	No change other than within 'Consolidated version of the Treaty Establishing the Economic Community' Article 196 becomes Article 260.
[Treaty of Nice] <sup>135</sup>		No change to existing provisions.

<sup>129</sup> N.20 above

<sup>130</sup> N.1 above

<sup>131</sup> N.3 above

<sup>132</sup> N.17 above

<sup>133</sup> N.20

<sup>134</sup> N.6 above

<sup>135</sup> N.4 above

**Table 2.26 Historical development of the Economic and Social Committee's Rules of Procedure**

What was adopted	Quoted Authority to adopt	Reference
Rules of Procedure September 1998	None included, nor is any record of their adoption provided.	Was at <a href="http://www.esc.eu.int">www.esc.eu.int</a> , now superceded
Rules of Procedure July 2002	Article 260(2) <sup>136</sup> (Article 260(2) does not exist – should refer to Article 260)	<a href="http://www.esc.eu.int/pages/en/home.asp">www.esc.eu.int/pages/en/home.asp</a> (Click on 'Rules of Procedure')

On the interim assumption that the Rules available have legitimacy they provide a clear basis for the operation of the ESC. An appealing requirement is the duty of the oldest member of the ESC to convene the first meeting for the initial proceedings of a newly constituted ESC. The oldest member was to be assisted by the four youngest members, while the officers – President, Vice-presidents etc – are elected. The requirement for the four youngest members to be involved in the first meeting as described above no longer exists in the July 2002 version of the Rules of Procedure.

#### 2.3.3.5 Summary

For the European Parliament the data of Table 2.23 suggests that there have been ten editions of their Rules of Procedure since the 4<sup>th</sup> Edition in 1987 (European Parliament, 1987). On average each edition has been valid for a period of a little over 14 months. In Section 2.3.4 the Rules of Procedure will be looked at in some detail to investigate their role in establishing interfaces to the world beyond the EC institutions, in this context the length of time between successive changes to the Rules of Procedure may be found to be of significance.

It can be seen that some of the Tables above are lacking in some details. These omissions are caused by an inability of the researcher to access the missing data. For the European Parliament it can be seen that data on editions 5 to 13 inclusive of their Rules of Procedure is not fully reported. With frequent changes, and no obligation to publish, it may be that these editions were never published into the public domain. Enquiries of the European Parliament have not successfully clarified if this was indeed the case.

<sup>136</sup> N.5 above

From the above data it is suggested that two conclusions can be drawn, the first is that without treaty obligations to publish their Rules of Procedure the institutions appear to have been satisfied with keeping the Rules of Procedure out of the public domain, with greater use of the internet this criticism has become less valid. The second conclusion is that it is far from certain that the institutions will meet their treaty obligations.

#### 2.3.4 THE INTERACTIONS OF EACH INSTITUTION WITH MEMBER STATE GOVERNMENTS AND WITH OTHER ORGANISATIONS OR INDIVIDUALS (CATEGORY 3).

It has already been established (Section 2.3.2) that the controlling process for new and amending EC internal market directives is the codecision process of Article 251<sup>137</sup>. This process does not specifically call for any interaction by any of the EC institutions involved in the process with other organisations that are themselves not EC institutions. Thus any interactions that occur between EC institutions and other organisations are in addition to treaty requirements. It should also be noted that the Treaty (op. cit.) does not explicitly prohibit interactions between EC institutions and other organisations. What exists, then, is a situation where the EC institutions may consult with other organisations either as a result of each institution's own Rules of Procedure or in an *ad hoc* way. Within the remainder of Section 2.3.4 the evidence relating to formal and/or *ad hoc* interactions between individual EC institutions and other organisations is presented.

##### 2.3.4.1 The Commission

As discussed in Section 2.3.3.2 the publicly available Rules of Procedure (Commission, 2000) do not include the *modus operandi* for Commission officials. As a result EC internal market practitioners do not have ready access to information that describes the processes and procedures, if indeed they exist, that pertain to Commission officials following an initial instruction to officials to work on a particular piece of draft legislation. There is therefore a distinct gap in process information from initiation of

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<sup>137</sup> N.5 above

draft legislation until such time as the proposal becomes official and initiates the codecision process.

Despite the lack of transparency of the process it is clear that *ad hoc* interactions between the Commission and other organisations do take place. This author has himself been a representative of CECOD, the European petrol pump manufacturers' association, in discussion with Commission officials regarding the early drafts of the proposed Measuring Instruments Directive. It became clear during these discussion that other organisations had met with, and were to meet with, Commission officials. It also became clear that those organisations with an active and permanent presence in Brussels had the earliest and therefore most powerful voice.

#### 2.3.4.2 The Council

It is evident from this author's professional experience of working with the Department of Trade and Industry's (DTI) Standards and Technical Regulations Directorate (STRD) and with their National Weights and Measures Laboratory (NWML) that Member State government officials are involved with Commission officials prior to the codecision process. Depending on the relationship that exists between a UK organisation and the DTI then that UK organisation may have an opportunity to influence the UK's position in the early stages of negotiations. The relationship of any organisation with DTI rests primarily with the organisation rather than with DTI. It clearly must remain the responsibility of the various organisations to ensure that their interest in certain legislative areas is made known to DTI. It would be unreasonable to expect that the DTI should be proactive and required to keep tabs on all organisations that might have an interest in any potential legislative area.

Once the codecision process is initiated then Council, via Council and its subsets as defined in the Treaty<sup>138</sup>, has a significant and defined role to play. This author's experience suggests that Council working group members representing the UK can be receptive to external views provided that these views are well documented and well supported by appropriate evidence.

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<sup>138</sup> N.5 above



Once new EC internal market technical legislation is adopted then the Member States' role changes from being one of a group negotiating a collective way forward to that of being in the lead role for a single Member State's transposition of the new directive into national law. In the past transposition may have been a somewhat arbitrary process but with the publication of the Cabinet Office's 'Transposition Guide' (Cabinet Office, 2003) the transposition process becomes much more transparent. Of particular interest to internal market practitioners is its requirement to '*Ensure appropriate consultation with external stakeholders ...*', a requirement that, if fully implemented by UK government departments, will surely produce beneficial outcomes.

#### 2.3.4.3 The European Parliament

Chapter VIII 'Legislative Procedures' of the European Parliament's Rules of Procedure (European Parliament, 1999) contains detailed procedures for all stages of legislative activity within the European Parliament. Within these procedures there are no requirements placed upon the overall parliamentary apparatus to consult with interested parties outside of the EC institutions. This author can confirm from first hand experience that the parliamentary committee system via rapporteurs of Parliamentary committees, can and does, welcome well researched submissions from external organisations. The windows of opportunity for the input of such submissions are narrow because of the procedural timetables and in general the submissions need to be made on the initiative of the outside organisations rather than by invitation.

Article 194<sup>139</sup> confers on European Union citizens, and others, the right to petition the European Parliament on matters that affect them. This right, together with the services made available through the offices of the European Ombudsman (op. cit. Article 195) should not be seen as ways to affect the passage of legislative proposals through the legislative change process, see Section 4.3.2.4

There are no treaty provisions for formal dialogue between the European Parliament and Member State national parliaments. However most, but not all, UK elected Members of the European Parliament (MEPs) are representative of the major political parties of the UK parliament and contact with national Members of Parliament are to be expected.

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<sup>139</sup> N.5 above

#### 2.3.4.4 The Economic and Social Committee

Setting it apart from the other institutions Chapter VI 'Observatories, Hearings, Experts' of the Economic and Social Committee's Rules of Procedure (ESC, 2002) makes specific provisions for outside speakers and experts from outside the ESC to assist in their work. This author has no first hand knowledge of making submissions to the ESC and since it is only a consultative body submissions to it rather than to the Commission, the Council and to the European Parliament are less likely to have a significant effect on the final outcome of legislative proposals.

There are no provisions in either the Treaty<sup>140</sup> or the Rules of Procedure (ESC, 1999a) for direct contact between the ESC and Member State national parliaments.

#### 2.3.4.5 Summary

Section 2.3.4 has provided an insight into the opportunities that exist for individuals and organisations to interface with the EC institutions involved in internal market technical legislative change. Whilst opportunities to interact with the institutions clearly exist a proactive approach from outside is likely to be more successful than reliance on reacting to invitations to participate.

### 2.4 An extended system

Section 2.2 identifies the four EC institutions that are formally involved in the EC internal market technical legislative process via the Article 251 (op. cit.) process. Section 2.3.4, concerned with interactions beyond the EC institutions, clearly implies the existence of a wider system<sup>141</sup>, albeit not all of the wider system is a formally

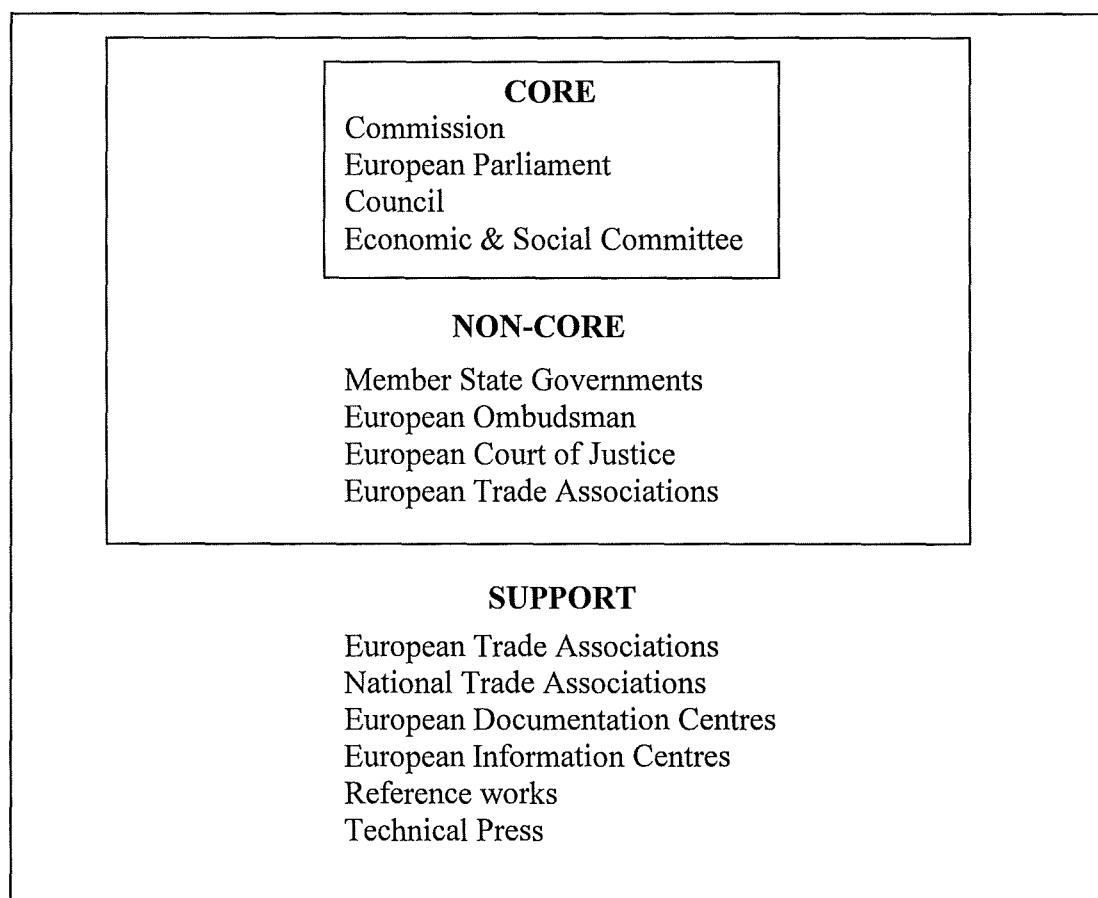
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<sup>140</sup> N.5 above

<sup>141</sup> The word 'system' is used rather than the word 'process' because process implies a flow from an input to an output. In the case of interactions between an EC institution and external individuals or organisations there is no specific flow direction and the concept of a 'system', within which there is no specific flow direction, is more appropriate. Such a system concept fully recognises the legal status of that part of the system described in the Treaty.

recognised system. To assist in the general understanding by EC internal market practitioners, and for ease of making future references, it is helpful to introduce and describe the concept of an extended system for the generation of EC internal market technical legislation. The core of this extended system being the four EC institutions involved in the EC internal market technical legislative process. The introduction of this extended system concept should not be construed in any way as compromising the legal status of the EC institutions.

**Figure 2.2 Diagrammatic representation of an extended system**



The precision with which the components of such a conceptual extended system can be described reduces with movement away from the core. The diagrammatic representation of the extended system provided in Figure 2.2 cannot be taken as a definitive picture because elements of the support system will come and go. Figure 2.2 does, however, provide a helpful guide to the structure of the conceptual extended system.

The non-core section of the extended system includes those organisations that the EC institutions are bound to take some notice of, but who have no direct control on the outcome of the output from the core. From the perspective of an internal market practitioner, Member State governments and European trade associations are possible routes by which influence may be brought to bear on the output from the core. The roles of the European Ombudsman and European Court of Justice are non-executive roles in the EC internal market technical legislative process, they can best be interpreted as reactive, post process, quality management.

The support section of the extended system outlined in Figure 2.2 functions primarily as an information dissemination sub-system. The inclusion of European Trade Associations in both the non-core and support sections reflects their important link role between the EC institutions and internal market practitioners with information flows expected to be bi-directional. Dissemination of information operates, or should operate, in two ways. Some constituents of the sub-system, for example European and National trade associations and the technical press, operate in a 'push' mode whereby information coming to them is disseminated to their membership or readers. Other constituents of the sub-system, for example European Documentation Centres and reference works, operate in a 'pull' mode whereby they only disseminate information when accessed.

## 2.5 Summary

Within this Chapter the European Community institutions involved with the EC internal market technical legislative process were identified and then the Membership of these institutions was explained. This allowed some perspective on who the institutions represent and provided some clues as to their accessibility.

This was followed by a discussion on provisions for languages made within the Treaty<sup>142</sup>. This analysis highlighted some inconsistencies, possibly drafting errors, within the Treaty (op. cit.).

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<sup>142</sup> N.5 above

For each of the four institutions identified as being involved in the EC internal market technical legislative process three aspects of their involvement in the overall process were examined. These three aspects being: their interactions with other EC institutions which the EC internal market technical legislative process as defined in the Treaty (op. cit.), their internal processes as described in their respective 'Rules of Procedure' and their interfaces beyond the EC institutional infrastructure.

Related to the first two aspects noted above the examination of the Article 251 (op. cit.) process, shown diagrammatically in Figure 2.1, revealed that, under the authority of Article 251(2) '*The Commission shall submit a proposal [for legislative change] to the European Parliament and the Council.*' However, the internal Commission process that causes the Commission to begin work on a legislative change proposal, the 'Initiating Event' of Figure 2.1, remains unclear. Also, as discussed further in Section 5.2.4, specific requests for legislative proposals, made to the Commission, from the European Parliament, under the authority of Article 192 (op. cit.), can be denied by the Commission. Thus the Commission is in a very powerful controlling position with regard to the formulation of proposals for EC internal market technical legislation.

Section 2.4 offers the concept of a system that extends beyond the EC internal market legislative process described in the Treaty (op. cit.). This conceptual system serves two purposes. The first purpose is to aid the overall understanding of the process by EC internal market practitioners. The second purpose is to identify all of the elements of the system that need to be investigated further within the remainder of the literature review that is presented in Chapter 3.

## Chapter 3 Literature survey and review

### 3.1 Introduction

The overall literature survey and review of this research is presented in two main parts. The first part is presented in Chapter 2 'The law making process'; within this part the primary, high level, European Community internal market technical legislative process, as set out in inter-governmental treaties<sup>1,2,3,4,5</sup>, is identified.

The second part of the literature survey and review, presented here, is concerned with extending the findings presented in Chapter 2. Within this extension second, and lower, level processes and procedures associated with the establishment of European Community internal market technical legislation are identified. The identification of the processes and procedures that enable the European Community internal market technical legislative process<sup>6</sup> is a necessary precursor to any analysis of the characteristics of the process.

Section 3.2 presents a critical analysis of literature originating from those European Community institutions that have a formal role within the EC internal market technical legislative process. This literature is of particular significance to this research as it addresses the roles played by the EC institutions in the legislative process and the perceived state of the internal market.

Literature generated by commentators external to the EC institutions on the legislative process and on the perceived state of the EC internal market is presented in Section 3.3.

During the preparation of Chapter 2 a number of inconsistencies in primary EC legislation were discovered. It was also shown that the drafting of some secondary legislation does not comply with all of the requirements set out in European Community

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<sup>1</sup> Treaty establishing the European Economic Community [Treaty of Rome], HMSO, London (This is Cmnd 4864 that reproduces, in English, the text of the Treaty as originally published in 1957)

<sup>2</sup> Single European Act, OJ 1987 L 169/1-29

<sup>3</sup> Treaty on European Union [Maastricht Treaty], OJ 1992 C 191/1-67

<sup>4</sup> Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [Treaty of Amsterdam], OJ 1997 C 340/1-144

<sup>5</sup> Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [Treaty of Nice], OJ 2001 C 340/1-144

<sup>6</sup> The reader is referred to the list of Definitions on page (x)

primary legislation. An assessment of the effects of these deficiencies will be reported here.

This Chapter extends the work reported in Chapter 2 to provide further critical analysis of the EC internal market technical legislative process, thereby fulfilling the requirement of Objective 1 as set out in Section 1.3.1. This part of the literature survey and review is not intended to provide a detailed legal critique of the output of the European Community internal market technical legislative process. Critiques of this type have been left, wisely in the author's view, to other commentators. However, it is fully recognised (OU Course Team, 1986) that a poorly defined and/or controlled process may result in wide variation in the quality of the output from the process. The corollary is that variation in the quality of the output of a process, may be of value to adduce that the process is not well defined and/or controlled.

This is followed by a brief statement on the UK processes. In Section 3.5 a commentary on the overall literature view is presented that discusses the way that some of the literature findings are used in support of the structured interview and highlights findings used in later analyses.

The literature search has failed to identify any works providing an understanding of the processes and procedures of the EC internal market technical legislative process, works that would generally and genuinely assist internal market practitioners to become fully involved in the process. Literature examples that do exist to help explain the EC legal order are provided by Louis (1995), Craig & de Burca (1998) and Roney (1998). Louis (1995) and Craig & de Burca (1998) each write in a manner appropriate for law students and members of the legal professions. These texts discuss in depth the meanings of many of the provisions of the treaties establishing the EC but provide no structured help to cater for the needs of internal market practitioners needing to monitor or influence the EC internal market technical legislative process. Roney (1998), somewhat in contrast to both Louis and Craig & de Burca, writes in a style judged to be more understandable by, and perhaps more useful to, those people with little or no legal training. However, in keeping with the other authors, Roney (1998) provides little or no 'how to help yourself' guidance for EC internal market practitioners. This thesis addresses the identified gap in academic research by providing more complete data than hitherto available.

## 3.2 European Community institution literature

This major sub-section of the overall review begins by establishing a baseline, or official, view of the internal market, a view generated from within the set of EC institutions with involvement in the generation of EC internal market technical legislation. Comments on the official view of the internal market expressed by other EC institutions are evaluated before the processes and procedures of the EC institutions involved in the generation of internal market technical legislation are reviewed.

In the context of the development of the internal market and of supporting directives adopted via the EC internal market technical legislative process no single EC institution has either full responsibility or total executive control. The limits of each institution's responsibility and executive control is reflected in their views on the internal market. These views are reported in Section 3.2.2

### 3.2.1 THE OFFICIAL VIEW OF THE INTERNAL MARKET

To establish the official view of the internal market the first requirement is to determine from whom the official view should be obtained. At the conceptual level the internal market is a construct of Council (the Member States), of the European Parliament (directly representing the citizens) and the Commission (generally seen as the executive of the European Community).

The role of the Commission is established by Article 211 of the Treaty<sup>7</sup>. In the context of the internal market the first three indents of Article 211 are pertinent and for ease of reference are reproduced below:

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<sup>7</sup> Consolidated Version of the Treaty Establishing the European Community, OJ 2002 C 80/1-87



*Article 211 (Extract)*

*In order to ensure the proper functioning of the common market, the Commission shall:-*

- ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied;*
- formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission consider it necessary;*
- have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty;*

From the above extract it would seem reasonable to infer that the Commission is the executive custodian of the internal market, so that the Commission's pronouncements on the internal market should be taken as the official view. For the purposes of this research the official view of the internal market is that view promulgated by the Commission.

Within the remainder of this Section a number of issues will be discussed. These include the inconsistent use of terminology, New Approach directives, delay in completion of the EC internal market and timeliness of transposition of EC internal market directives into Member State national legislation.

An indication of an apparent lack of awareness of change by the Commission, and others, can be seen in the above extract from Article 211 (op. cit.). The Treaty of Nice<sup>8</sup>, which post dates the scheduled 31 December 1992 completion of the single market<sup>9</sup>, continues to make reference to the common market. The reality is that three quite different terms are currently used to describe what appears to be the same concept:-

Common Market – Treaty of Nice<sup>10</sup>

Internal Market – Treaty of Nice<sup>11</sup>, Single European Act<sup>12</sup>

Single Market – Council resolution of 7 December 1992 on making the Single Market work<sup>13</sup>

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<sup>8</sup> N.5 above

<sup>9</sup> N.2 above

<sup>10</sup> N.5 above

<sup>11</sup> N.5 above

<sup>12</sup> N.2 above

<sup>13</sup> Council Resolution of 7 December 1992 on making the Single Market Work, OJ 1992 C 334/1-3

From the perspective of those outside of the EC institutions in particular, it would be helpful if a standard nomenclature were adopted to describe this European Community market concept. Standardised use of nomenclature would also provide greater confidence that those responsible were working towards the same goal.

The term 'common market' can be traced back to the very beginnings, i.e. the Treaty of Rome<sup>14</sup>, of what has evolved into the European Community and the European Union through the adoption of the Single European Act<sup>15</sup> and the Treaty on European Union<sup>16</sup>; it is, however, a term that is somewhat lacking in clarity. Article 8 (1) (op. cit.) established that: *'the common market shall be progressively established during a transitional period of twelve years [From 1958]'* without there being a full definition of what the common market should be. As the EEC developed, and indeed focussed on improving the common market, it appears that there was a perceived marketing need to re-brand the common market at the time of its re-launch. The re-launch of the common market began with Lord Cockfield's seminal white paper (Commission, 1985), which is generally seen as the starting point for the transition from the common market to what is now known as the internal market. The Cockfield (op. cit.) paper set out a number of objectives that were to be met to complete the internal market by the end of 1992. The importance of this document in the long route to market integration should not be underestimated, but its limitations should also be recognised. It is, perhaps inevitably, a strategic political document, where the devil is in the [lack of] detail.

The following brief analysis of the Cockfield document will be restricted to its impact on the free movement of goods although the paper addresses all four aspects of the internal market; goods, persons, services and capital. The analysis is assisted by two extracts taken from Part II (op. cit.), The Removal of Technical Barriers:

*Paragraph 58*

*This does not mean that there should be the same rules everywhere, but that goods as well as citizens and companies should be able to move freely within the Community.*

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<sup>14</sup> N.1 above

<sup>15</sup> N.2 above

<sup>16</sup> N.3 above

*Paragraph 60*

*.... barriers created by different national product regulations and standards have a double-edged effect: they not only add extra costs, but they also distort production patterns; increase unit costs; increase stock holding costs; discourage business cooperation, and fundamentally frustrate the creation of a common market for industrial products.*

If a level playing field internal market is to exist without the same rules everywhere there is a need for an effective training programme, run by the individual Member States which have responsibility for the training of national officials, for central government, and more local, legislators and enforcers. Such training would be to ensure that these individuals do not allow the disparities to impede the free sale and use of products. The only evidence of training encouraged by the Community in this general area is through the Schuman Project<sup>17</sup>. Given that this project is an awareness training programme for the legal professions rather than for internal market practitioners it rather projects the view that, instead of putting in place a legislative system for the internal market that works effectively then some preparations will be made to resolve the inevitable aftermath.

The inconsistency arises from '*This does not mean that there should be the same rules everywhere...*' and '*barriers created by different national product regulations...*' in the previously noted quotations. The conflict between these two quotations may not appear to present significant problems to their authors but the responsibility for resolving the conflict now rests with practitioners who, somehow, have to make the system work. The problems associated with the inconsistency have been passed on, but without the necessary authority to properly resolve the inconsistency. The above inconsistency serves to illustrate the possible tensions between the Article 14(2)<sup>18</sup> Treaty requirement for '*... the free movement of goods, persons ...*' and the necessary technical harmonization through some form of collective agreement on the means to achieve the requirement.

Fortunately an alternative internal market strategy was put forward in Paragraph 65 (op. cit.) The relevant extracts are provided below:

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<sup>17</sup> Decision No 1496/98/EC of the European Parliament and of the Council of 22 June 1998 establishing an action programme to improve awareness of Community law within the legal professions (Robert Schuman Project, OJ 1998 L 196/24-31)

<sup>18</sup> N.5 above

- *legislative harmonization (Council Directives based on Article 100 [Now Article 94]) will in future be restricted to laying down essential health and safety requirements which will be obligatory in all Member States. Conformity with this will entitle a product to free movement;*
- *harmonization of industrial standards by the elaboration of European standards will be promoted to the maximum extent, but the absence of European standards should not be allowed to be used as a barrier to free movement. During the waiting period while European standards are being developed, the mutual acceptance of national standards, with agreed procedures, should be the guiding principle.*

The 'New Approach', alluded to above, was confirmed in a detailed Council Resolution<sup>19</sup> as the way to speed up the European Community internal market technical legislative process. A revised concept of internal market technical directives was clearly seen as necessary to meet the Council Resolution's (op. cit.) need to '*... resolve the present situation as regards technical barriers to trade and dispel the consequent uncertainty for economic operators*'. The EC internal market technical legislative process had been suffering avoidable delays from the 'old approach' practice of including detailed technical specifications within directives. The old approach process had two significant drawbacks. The first was the requirement for unanimity in Council decision making and the second was the exclusion of all but legislators from the process of drawing up detailed technical specifications. The introduction of the new approach was a radical change that simultaneously maintained control of the legislative objectives by the EC institutions but devolved the detailed technical work to organisations outside the EC institutions.

The introduction of the new approach heralded an era where the expectation was that only the objectives of technical legislation were to be set by the legislators. A revised, simpler, task such as this had the advantage of being more amenable to the requirements of voting in Council. Any necessary product specific technical details were then to be elucidated in standards<sup>20</sup>. These standards were to be prepared by recognised European standards bodies (CEN, CENELEC and ETSI). These European standards bodies had first been formally recognised by the European Community in directive 83/189/EEC<sup>21</sup>.

<sup>19</sup> Council Resolution of 7 May 1985 on a new approach to technical harmonization and standards, OJ 1985 C 136/1-9

<sup>20</sup> Note that the real need remains that of complying with the relevant directives and transposed national legislation, compliance with published standards is just one way of achieving this.

<sup>21</sup> Council Directive of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ 1983 L 109/8-12

These European Standards bodies have been re-affirmed in directive 98/34/EC<sup>22,23</sup>. The European standards bodies are supported through the national standards bodies of the Member States and other European countries. In turn these national standards bodies draw upon the whole spectrum of interested parties when considering proposals for technical standards. Such a hierarchy allows, even encourages the participation of EC internal market practitioners drawn from legislators, enforcers, manufacturers and users. For the United Kingdom the relevant national standards body is the British Standards Institution (BSI).

In summary, the Commission view in 1985 was that the common market was not complete. With a new Commission in post, established in 1985, the conditions were conducive to a new impetus to complete the common market. The way forward was mapped out with proposals for a new approach to the necessary secondary legislation through a Council Resolution (op. cit.) and a Commission white paper (Commission, 1985). The new approach way forward was coupled with a challenging timetable (op. cit. Annex I) that should see a completed internal market in place as at 1 January 1993.

The preceding paragraphs have used the terms 'common market' and 'internal market' in a manner consistent with the literature being discussed. However, even before the re-launch of the internal market on 1 January 1993, Council added to the potential for confusion by the adoption of a Council Resolution<sup>24</sup> on making the Single Market work. In this resolution there are twenty-nine references to the single market and one reference to the internal market.

At the time of writing, August 2004, the term common market appears to have fallen out of everyday use, leaving the terms internal market and single market apparently as synonyms. Mortelmans (1998) dismisses, as now irrelevant, the term common market and accepts the terms internal market and single market as synonyms. Is it of concern that two, or possibly three, synonyms are used? It is of concern on two counts. The first relates to image. The term internal market could be taken to imply a protected

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<sup>22</sup> Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ 1998 L 204/37-48

<sup>23</sup> Directive 98/34/EC deals with two issues. The first issue identifies specific European Standards bodies and their role in support of EC internal market technical directives. The second issue deals with a method of protecting the EC internal market from Member State national regulations and is discussed in Section 3.3.1

<sup>24</sup> N.13 above

market, inaccessible to those outside of the EC. The term single market projects a modern, unified, image and it adequately reflects a market belonging to the EC as a whole. In practice, whatever its name, it is a market that is open to all, including those outside of the EC, all that is required is adherence to the market rules.

The second concern is about accessibility of information. A UK internal market practitioner may look for help from the Department of Trade and Industry (DTI). An intended initial contact point within the DTI is 'Action Single Market' - not 'Action Internal Market'. More generally in the EC accessibility of information about the internal market is made more difficult than necessary by the inconsistent use of the terminology. Within the Commission there is an Internal Market Directorate-General, not Single Market Directorate-General and EU internet sites are accessed via addresses including internal market not single market. Yet the Economic and Social Committee has a group that monitors the operation of the internal market and issues reports – from the Single Market Observatory (Economic and Social Committee, 1999).

A further complication is unnecessarily introduced by the Commission's organisational structure. This structure places the responsibility for new approach directives with Directorate-General Enterprise rather than Directorate-General Internal Market as would perhaps have been expected. Within the Commission the various Directorates-General are at the same hierarchical level and as a result DG Internal Market has no direct control of the activities of DG Enterprise. The management of the situation described is not assisted by Directorates-General Enterprise and Internal Market each being responsible to different Commissioners within the collegiate Commission.

From the perspective of managing engagement with a process the institutions of the European Community do not assist by the inconsistency of nomenclature regarding the process. It has been found that there is no effective EC inter-institutional agreement about even the name of what is supported by a plethora of subsequent legislation.

Notwithstanding the above criticism the remainder of this literature review will be conducted on the basis that the terms internal market and single market each refers to the same concept. This basis was questioned in correspondence with the Director General of Internal Market Directorate-General. In the reply Graaf, a Head of Unit in the Internal Market Directorate-General, stated that *"There is no difference in meaning*

*as regards the terms 'Single Market' or 'Internal Market' and both are used extensively."*

Any view, particularly any official view, of the internal market must be assessed against the definition of the internal market established within the Single European Act<sup>25</sup>.

Article 13 of Sub-section 1 – Internal market, of Section II of the SEA (op. cit.) introduced a new Article 8a of the Treaty of Rome<sup>26</sup>. The new Article 8a introduced a timetable for the establishment of an internal market with defined characteristics. For ease of reference the new Article 8a (op. cit.) is reproduced below:-

#### *Article 8a*

*The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and Articles 8b, 8c, 28, 57 (2), 70 (1), 84, 99, 100a and 100b and without prejudice to the other provisions of this Treaty.*

*The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is assured in accordance with the provisions of this Treaty.*

There can be little doubt that the Member States, the 1987 signatories of the Treaty (op. cit.), expected the internal market to be fully functioning by 1 January 1993.

To maintain a perspective on events it should be recognised that this research is being carried out nominally a decade after the intended establishment of the internal market. The completion of the internal market was to a timetable, itself in excess of five years duration, that had been agreed between the Commission and the Member States and which was publicly announced through publication of the Single European Act<sup>27</sup> in the Official Journal.

In recent times the Commission has put forward its view of the internal market in two series of publications. The first series are official Commission 'COM' documents each addressed to one or more of the other EC institutions. The second series are glossy brochures entitled 'Internal Market Scoreboard', these have a much wider intended

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<sup>25</sup> N.2 above

<sup>26</sup> N.1 above

<sup>27</sup> N.2 above

readership than the expected readership of the COM documents. In 2001 Mr Mogg, Director General of Internal Market Directorate General, widely distributed a letter stating that ‘... *these informative brochures have been sent directly to Opinion Leaders and European Organisations*’. The paper versions of Internal Market Scoreboards indicate that they are only available in a restricted set of languages. In his reply to an enquiry Mr Schmeidel, an official in Directorate General Internal Market, said ‘*Internal Market Scoreboards have the status of Commission Staff Working Papers. As such we do not need to publish in all 11 official languages.*’ Currently paper versions are available in English and French (Commission, 2001a) with all official language and working language versions being published electronically. Each of these two series of publications reviews and assesses the internal market in its entirety – i.e. it goes beyond this research’s interest, an interest limited to the free movement of goods.

A paper from the first series of publications noted above is that entitled ‘Working together to maintain momentum’ (Commission, 2001b), the Commission’s 2001 review of internal market strategy. In the ‘Introduction’ (op. cit.) there is much rhetoric about the external environment of the internal market. Additionally the Commission encourages the Member States and the European Community institutions into taking the internal market forward. Nowhere in the introduction is there even a hint of an admission that the goal of barrier-free trade by 31 December 1992 has not yet been fully achieved.

Two illustrations are offered to suggest that barrier-free trade has not yet been achieved. The first stems from continuing practical experience of having to deal with barriers to trade that affect the free movement of petrol dispensers for retail use. The second derives from the existence of a recently adopted Measuring Instruments Directive (MID)<sup>28</sup>. The MID is a directive for manufactured goods, measuring instruments, having as its legal basis Article 95 – the internal market Article of the Consolidated Version of the Treaty Establishing the European Community<sup>29</sup>. In the context of questions relating to the completion of the internal market the MID<sup>30</sup> has some significance. The proposal encompasses products, including electronic petrol dispensers for retail use, not currently encompassed by legal metrology directives and is

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<sup>28</sup> Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring instruments (Measuring Instruments Directive), OJ 2004 L 135/1-80

<sup>29</sup> N.7 above

<sup>30</sup> N.28 above



not due to come into force until 2006. This strongly suggests that the internal market legislative framework, and hence the internal market itself, cannot yet be considered as complete.

The main text of the Commission review (Commission, 2001b) contains a litany of failures of delivery of strategies for, and actual improvements to, the existing EC regulatory framework. Nowhere is there a clear plan of how existing and future commitments to regulatory progress will be delivered. The Commission's own analysis (op. cit.) shows that there remains a transposition deficit, directives that have not been transposed into Member State national law within the required time, of greater than 1.5%. Arguably the transposition deficit should never have been allowed to rise above zero, and certainly not since 31 December 1992.

Legitimate views of internal market practitioners could be that the Commission's report (op. cit.), and earlier reports, are seriously deficient in that they fail to analyse the options that exist, or could be created, to improve Member States' compliance with the requirements of the EC legislation.

The second series of reports from the Commission have a different presentational style and target audience. Their overall message is more about the present state of the internal market than future strategy. The Commission strategy document (Commission, 2001b) fulfils its title but does so from an apparent, implicit, assumption that, despite the admissions of legislative failure, the internal market is working well and is ready to be taken forward. Internal Market Scoreboard Number 9 (Commission, 2001c) expresses a series of shortcomings that suggests the internal market needs much attention before it fulfils its original expectations. Three brief extracts serve to illustrate this point:- *10% of directives have not yet been transposed in all Member States; 63% of the Internal Market Strategy's target actions due by the end of 2001 are expected to be completed on time; and most companies have not yet felt any impact from governments' attempts to simplify legislation.*

That *'progress from a 2.5% to a 2% transposition deficit has been made in only six months'* (op. cit.) and that good progress such as this must be recognised appears to be simply the promulgation of the view that it is acceptable for Member State legislators to fail to comply with legislation provided some progress is being made. There is no

evidence to suggest that manufacturers' claims of making some progress towards conformity with internal market legislation, rather than actually complying with the legislation, would provide protection from Member State enforcement regimes.

Detailed analyses of earlier Scoreboards are not included here. The messages they contain are very similar to the current messages, this in itself is an indictment that the rate of improvement is slow.

These recent examples of the series of reports from the Commission suggest that the Commission, the custodian of the Treaty, is moribund. It is not clear if this situation is the result of political pressure originating either within, or external to, the Commission, the result of management failure or some other factor(s). Whatever the cause the effect is that there is no clear, effective, strategy offered that includes an enforceable way to ensure that planned events, such as transposition of directives, actually take place. It is now more than ten years since the planned completion of the internal market, existing Member States are unable to fulfil their transposition obligations but, nevertheless, the Commission (op. cit.) expects that '*Candidate Countries must be ready to apply rules effectively from day one*'.

It is interesting, though perhaps not particularly constructive, to reflect that there appears to be little personal accountability for failures by the Commission or by Member States to comply with treaty obligations with respect to the internal market. Article 288 of the Treaty<sup>31</sup> contains the following statement: '*The personal liability of its servants towards the community shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.*' It has not been possible to confirm the texts of Staff Regulations or Conditions of Employment. Compare this to the situation where a manufacturer places a product on the internal market and it is found by a Member State that the product fails to comply with the national transposition of an internal market directive – possible forfeiture of goods and personal liability<sup>32</sup>.

Overall the view of the EC internal market as projected by the Commission appears to be inconsistent in that the Commission promulgates the completion of the internal

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<sup>31</sup> N.7 above

<sup>32</sup> The Environmental Protection (Prescribed Processes and Substances Etc.)(Amendment)(Petrol Vapour Recovery) Regulations 1996 (SI 1996/2678)

market as a *fait accompli* while at the same time admitting to serious deficiencies in the provision of the legislation at Community and Member State level that was seen as necessary for the completion of the internal market.

The choice of directives as the legal instruments for EC internal market technical legislation, see Section 1.3, draws Member State transposition of directives into the overall EC internal market technical legislative process. Thus any failure of Member State transposition can be seen as impeding the completion of the internal market, a completion that in 2004 is in excess of eleven years late. The above evidence is drawn upon in later analyses.

### 3.2.2 EU INSTITUTIONAL COMMENTS ON THE OFFICIAL VIEW OF THE INTERNAL MARKET

It was argued in Section 3.2.1 that the source of the official view of the internal market is the Commission. Council, the European Parliament and the Economic and Social Committee each has internal market legislative functions as defined in the Treaty<sup>33</sup> as discussed in Section 2.2.2. Any separately expressed views on the functioning of the internal market from each of these three EC institutions has value to this research. These separately expressed views are discussed in the following sub-sections.

#### 3.2.2.1 The Council

Before reviewing in detail any comments made by Council regarding the internal market it is helpful to be aware of the custodian role the Commission has with regard to the treaties, as set out in Article 211 of the Treaty<sup>34</sup>. This understanding should help to put in context the difference in the ways the functioning of the internal market is reported by Council and the Commission. In order to fulfil the custodian role the Commission could be expected to continually assess the effectiveness of the European Community legislative framework, a framework that includes those requirements necessary for the success of the internal market. As a result of any such assessments it is to be expected that reports and/or opinions may be issued by the Commission.

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<sup>33</sup> N.7 above

<sup>34</sup> N.7 above

Council's role within the overall EC framework is rather different from the role of the Commission, Council's role is defined in Articles 202 to 210, inclusive, of the Treaty (op. cit). Within the overall provisions of Articles 202 to 210 one Article is of particular relevance in the current context. For clarity this particular provision is set out below:

#### *Article 208*

*The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.*

Article 208, therefore, provides for Council, if it so determines, to request the Commission to undertake any investigative work that Council may see as necessary to determine how any aspect of the European Community is functioning. This then takes the place of Council performing any substantive investigation of its own. With regard to the internal market the opportunity available to Council to avoid preparing its own assessments appears to be extensively exercised. Review documents prepared by the Commission are available, all that appear to be available from Council are responses to Commission documents.

Article D of the Treaty on European Union<sup>35</sup> expressly requires that *'The European Council submits to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.'* It is unclear if such progress reports are based on primary or secondary data. The European Council report covering the year 2000 (Council, 2000) is rather bland and political in nature. References in the report (op. cit.) to the internal market are few and brief. Paragraph 3 (op. cit.) contains the most telling comment *'The internal market is largely complete and is yielding tangible benefits for consumers and businesses alike.'* Similarly Paragraph 16 (op. cit.) states *'Rapid work is required in order to complete the internal market in certain sectors ...'* These two statements together could be regarded as a positive, optimistic, 'spin' in claiming that the internal market is almost complete. What the European Council report (op. cit) does not provide is a thorough analysis of the difference between where the internal market currently stands and the 1985

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<sup>35</sup> N.3 above

(Commission, 1985) expectation of completion by 31 December 1992. Where are their questions and demands for action about what went wrong? One possible explanation for the focus on the internal market apparently being lost could be the realignment of political focus and resources towards monetary and political union following the Maastricht Treaty on European Union<sup>36</sup> and more recently on the EU expansion of May 2004.

The blandness, and political nature, of the European Council's report covering the year 2000 (Council, 2000) rather than it being a critical examination of the Commission's implementation of policies, is perhaps understandable when the European Council membership is remembered. The European Council is comprised of Member State political leaders – it is not an executive charged with the implementation of political ideas. The foregoing analysis suggests that reliance on yearly European Council reports for an in depth review of the internal market would be somewhat misplaced.

Is there some other way that Council could and/or does make known its opinion of the internal market and its infrastructure, preferably coupled with at least some minimal analysis? Before embarking on a response to the above question it is useful to note that Council, other than the European Council, is really the Council of Ministers (Roney, 1998) and any given Council of Ministers' meeting would, in general, be expected to work to a restricted agenda. Internal market matters are expected to be dealt with by the 'Internal Market, Consumer Affairs and Tourism Council'. As at March 2002 the most recently available draft minutes of an Internal Market, Consumer Affairs and Tourism Council are of the 2351<sup>st</sup> Council meeting (Council, 2001b). The general tone and language of these minutes is not very different from the language used in the yearly European Council (Council, 2000) report to the European Parliament. As in the yearly report (op. cit.) there is no real analysis of the state of the internal market.

From time to time Council Resolutions are adopted, as allowed for by Article 208<sup>37</sup>. These Council Resolutions tend to describe the background to a specific perceived problem and call upon the Commission, and other organisations, to take some action. In the case of the Commission it is usually to prepare some form of report. A good example of such an administrative action by Council is provided by the Council

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<sup>36</sup> N.3 above

<sup>37</sup> N.7 above

Resolution on the role of standardisation in Europe<sup>38</sup>. The resolution (op. cit.) explicitly *'INVITES all interested parties to participate actively...'*, *'CALLS UPON public authorities in the Member States to make appropriate and timely contributions to the process of standardisation ...'* and *'CALLS UPON the Commission to report to the Council....'*

The use of Council Resolutions in this way no doubt draws to the attention of the Commission, and others, specific problems related to the internal market and its infrastructure. There is, however, little evidence that such Council Resolutions are rigorously enforced – invitations and calls have little real force. Council Resolutions of this type, which appear only irregularly with time, do not provide a coherent picture of the internal market.

### 3.2.2.2 The European Parliament

The role and authority of the European Parliament is established by Articles 189 to 201, inclusive, of the Treaty<sup>39</sup>. Of these articles Article 192 is of particular interest in the context of the functioning of the internal market. For ease of reference Article 192 is reproduced in full below:

#### Article 192

*Insofar as provided in this Treaty, the European Parliament shall participate in the process leading up to the adoption of Community acts by exercising its powers under the procedures laid down in Articles 251 and 252 and by giving its assent or delivering advisory opinions.*

*The European Parliament may, acting by a majority of its Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing this Treaty.*

Within the role described by Article 192 the European Parliament prepares, debates and issues resolutions. The detailed work of the European Parliament is, in general, performed within its Committees rather than in plenary sessions. A complete list of the European Parliamentary committees, and their membership is available, see for example

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<sup>38</sup> Council Resolution of 28 October 1999 on the role of standardisation in Europe, OJ 1999 C 141/1-4

<sup>39</sup> N.7 above

Dod's European Companion (Vacher Dod, 2001). Recognising the dichotomy of Directorates General with an influence on internal market technical legislation within the Commission, Section 3.2.1, it would seem prudent to be prepared to find a similar dichotomy with the EP committee structure. Based on the titles of the many 1999 – 2004 European Parliamentary committees, two appear to be candidates for reporting on matters relating to the internal market. These two candidates are: 'C6 Legal Affairs and Internal Market Committee' and 'C7 Industry, External Trade, Research and Energy Committee'.

In an irregular sequence the Commission issues various communications and proposals for legislative change to the other EU institutions. On receipt of such communications or proposals by the European Parliament the President of the European Parliament assigns them individually to an appropriate European Parliamentary Committee charged with responsibility for the preparation of a response to the communication or proposal. These responses are then presented to plenary sessions of the European Parliament for adoption as European Parliamentary Resolutions – sometimes with amendments debated in plenary session. During the lifetime of the 1994 – 1999 European Parliament Commission communications relating to the internal market were referred, within the European Parliament, to Committee C7 Legal Affairs and Citizens Rights. Reference to the previous paragraph reveals that there is a difference in nomenclature for the European Parliament Committees of the European Parliament of 1994 – 1999 and the European Parliament of 1999 – 2004, changes such as these, necessary as they may be for the internal organisational efficiency of an organisation can, themselves, cause confusion to those outside of the organisation. To clarify the nomenclature Table 3.1 has been prepared to indicate correspondence between parts of the Committee structure of Commission Directorates General, Council and 1999-2004 and earlier European Parliaments.

In response to Commission communications the European Parliament adopts Resolutions that are published in the Official Journal. Such Resolutions are in an easy to read style that, overall, breaks down into three parts. The first part explains what it is that the European Parliament is responding to and identifies ancillary documents pertinent as background material. The second part consists of a series of short paragraphs providing succinct statements of problems that the European Parliament sees as existing and which should be addressed. The third part of the European

**Table 3.1 Indicating correspondence between aspects of Commission, Council and European Parliament structures.**

<b>Commission</b>		<b>Council</b>	<b>European Parliament Committee</b>
<b>Directorate General</b>	<b>Function</b>		
Enterprise (Note 1)	Issues proposals for new approach technical harmonisation directives for goods and includes 'Single market, regulatory environment, industries under vertical legislation'.	Internal Market, Consumer Affairs and Tourism.	C7 Industry, External Trade, Research and Energy.  (Note 3)
Internal Market (Note 2)	Broad internal market issues including 'Free movement of goods and regulated professions'.	Internal Market, Consumer Affairs and Tourism.	C6 Legal Affairs and Internal Market.  (Note 4)

- Notes:
1. Prior to 1999 was DG Industry
  2. Prior to 1999 was DG Internal market and Financial services
  3. Prior to 1999-2004 European Parliament was C4 Economic and Monetary Affairs and Industrial Policy.
  4. Prior to 1999-2004 European Parliament was C7 Legal Affairs and Citizen's Rights.

Parliamentary Resolution is again a series of succinct paragraphs that may be either criticisms directed at specific targets, e.g. the Commission, or calls upon, or requests, clearly identified target groups to take specific action to correct perceived deficiencies. Information on the views of the European Parliament on the operation of the internal market may thus be found in the second and third parts of European Parliamentary Resolutions taken in response to Commission communications.

For the purposes of this research there is little, if anything, to be gained in a review of the European Parliament's, originally the Assembly<sup>40</sup>, comments on the common

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<sup>40</sup> N.1 above



market extending back to the beginning of the European Economic Community in 1958. Where then, for this research, should such a review begin? By a Council Decision<sup>41</sup>, effective from 1979, direct universal suffrage for elections to the Assembly was introduced. Subsequently by the Single European Act<sup>42</sup> the Assembly became the European Parliament. The Treaty on European Union<sup>43</sup> introduced a new Article 189b, (Now Article 251<sup>44</sup>), increasing the powers of the European Parliament in dealing with certain legislative acts. This new process is sometimes referred to as 'codecision' although no such reference is made to the process in the treaty itself. Codecision, called into effect via Articles 14, 95 and 251 (op. cit.) is the current process that is used for the generation of internal market technical legislation. It is, therefore, appropriate that the starting point for any review of EP opinions of the internal market should not pre-date the introduction of the Article 251 (codecision) process by the Treaty on European Union<sup>45</sup>.

In 1996, four years after the Treaty on European Union (op. cit.) and also four years after the intended completion of the internal market, the Commission embarked on a project entitled '*SLIM*' – *Simpler Legislation for the Internal Market*' (Commission, 1996a)<sup>46</sup>. For the purposes of this research it would therefore seem reasonable to begin the review of the European Parliament's views on the internal market after the introduction of SLIM – i.e 1996.

The European Parliament's initial response to the SLIM Project (op. cit.) was published as a European Parliamentary Resolution<sup>47</sup>. In this Resolution the European Parliament makes two particularly telling comments. The first comment '*... another reason explaining the current lack of achievement of the single market programme ...*' and the second comment '*Notes that the SLIM Project has revealed that the burden of unnecessary legislation impairing the completion of the single market ...*'. These two

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<sup>41</sup> Council decision (76/787/EEC, EEC, Euratom) concerning the election of the representatives of the Assembly by direct universal suffrage, OJ 1976 L 278/1-11. [See also corrigenda OJ 1976 L 326/32]

<sup>42</sup> N.2 above

<sup>43</sup> N.3 above

<sup>44</sup> N.7 above

<sup>45</sup> N.3 above

<sup>46</sup> The SLIM project was aimed at identifying ways in which internal market legislation could be simplified and to enhance the competitiveness and employment potential of European business. The project was to cover all four aspects of the internal market. The work was to be undertaken by a series of working groups within the overall project.

<sup>47</sup> Resolution on the Communication from the Commission to the Council and the European Parliament '*Simpler Legislation for the Internal Market (SLIM): A Pilot Project*' (COM(96) 204), OJ 1997 C 132/213-215

extracts strongly suggest that the European Parliament's view at that time was that the single market was not complete.

The SLIM Project (Commission, 1996a) continues as an on-going project, a project that has as its emphasis the simplification of legislation in those areas where legislation already exists. Subsequent SLIM reports from the Commission (Commission, 1996b, 1997, 1999a) have not convinced the European Parliament of the overall success of the project although, as a project, it is supported as making a positive contribution to progress. In its responses to these Commission reports (op. cit.) the European Parliament<sup>48,49</sup> used phrases such as '... *the burden of unnecessary legislation impeding the completion of the single market...* ', once more implying that the single market was not yet complete.

Despite the apparent failure of completion of the internal market the European Parliament (op. cit.) clearly saw some merit in the work within the SLIM Project as evidenced by the phrase '*Urges the Commission to extend the scope of the SLIM method to all legislative areas in the Community, ...* '.

Much of the European Parliament's Resolution<sup>50</sup> on the Commission's Strategy for Europe's Internal Market (Commission, 1999b) follows the bland calls for action etc as in earlier Resolutions. However, in amongst these calls etc there is one item that has particular interest. Paragraph 39 includes the phrase '.... *The Commission in its latest Single Market Scoreboard ...* '. This is only a partial reference, as such it is particularly unhelpful in tracking down the relevant Single Market Scoreboard. The European Parliament's Resolution was taken on 13 April 2000, but not published until 7 February 2001, and the research requiring access to the reference was carried out in February 2002. From a process point of view there does not appear to be any valid reason why there is a delay of almost ten months before publication.

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<sup>48</sup> N.47 above

<sup>49</sup> Resolution on the report from the Commission to the Council and the European Parliament on simpler legislation for the internal market (SLIM): results of the second phase and the follow-up of the implementation of the first-phase recommendations (COM(97) 0618), OJ 1998 C 80/292-295

<sup>50</sup> European Parliament resolution on the communication from the Commission on to the European Parliament and the Council: The Strategy for Europe's Internal Market (COM(1999) 464 – C5-0212/1999 – 1999/2167/(COS)), OJ 2001 C 40/465-469

The foregoing criticism has a particular irony when it is considered in relation to an admonishment in the European Parliament's Resolution<sup>51</sup> where the European Parliament is critical of Commission delays associated with their Twelfth Annual Report (Commission, 1995). The report (op. cit.) was made available to the European Parliament on 19 June 1995 but was not published in the Official Journal of the European Communities until 29 September 1995. The European Parliament<sup>52</sup> made the direct statement '*that this delay limits the usefulness of considering these reports ...*', but the delay is less than half of the delay in publishing a European Parliamentary Resolution five years later. Delays such as those noted above may be little more than irritants to the European Parliament but such delays contribute to the exclusion from processes that at best are barely visible to external individuals and organisations.

The European Parliament's Resolution (op. cit.) is of significance in at least one other regard. Paragraph 33 includes the statement '*Regrets that the Commission is not making greater efforts to train and inform the legal professions in the field of Community law ...*'. This statement may not adequately reflect the balance between Member State and European Community control over the legal professions. It also seems that this statement might have been a trigger that at least contributed towards the introduction of the Robert Schuman project<sup>53</sup>. The Robert Schuman project was introduced to improve awareness of Community law among Member State legal professionals. In process terms the Robert Schuman project should be seen as an 'after the fact' process, a programme designed to assist with unravelling the consequences of Community law, consequences that may be the result of poor drafting or poor appreciation of the law by the legal professions. From the perspective of an internal market practitioner, and in keeping with modern quality management principles of preventing nonconformities and eliminating their causes (ISO, 2000), more focus on improving the existing process might be seen as more appropriate than improving the training of lawyers<sup>54</sup>.

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<sup>51</sup> Resolution on the Commission's Twelfth Annual Report to Parliament on monitoring the application of Community law – 1994 (COM(95)0500-C4-0233/95), OJ 1996 C 65/37-43

<sup>52</sup> N.51 above

<sup>53</sup> N.18 above

<sup>54</sup> As a result of what was perceived, by UK trade association representatives, as misapplication of Council Decision 93/465/EC [The Modules Decision affecting manufacturers' quality management systems] the EP Rapporteur for the draft Measuring Instruments Directive was persuaded to take the unusual step of including in the EP's second reading amendments a specific amendment requiring the Commission to review the working of Council Decision 93/465/EEC. These amendments were subsequently adopted by the Commission and by Council and incorporated in the final text of the

No evidence has been found to suggest that the European Parliament initiates and issues 'own opinion' reports on the functioning of the internal market. No evidence, other than the single incidence reported in Section 5.2.4, has been found to suggest that the European Parliament has invoked its powers under Article 192 of the Treaty of Nice<sup>55</sup> to: '*... request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing this Treaty*'. The European Parliament appears, therefore, to operate primarily in a reactive rather than a proactive way. This suggests that the institution with the most direct representation of the people is not fully exercising and/or exploring its potential for influence and the power of requests for a proposal from the Commission appears not to have been fully tested, and requests can of course be denied.

### 3.2.2.3 The Economic and Social Committee

The Economic and Social Committee (ESC) is, as an institution created by the Treaties<sup>56</sup>, part of the EC internal market legislative process. The status of the ESC within the overall process must be considered to be somewhat inferior to the status of each of Council, the European Parliament and the Commission because the ESC has only an advisory role. In the drafting of legislative proposals the Commission wields the power of the pen and has the responsibility for the preparation of the initial draft. 'First reading' decisions on the Commission's legislative proposals are made by the Council, and the European Parliament, acting under the provisions of Article 251<sup>57</sup>. Article 95 (op. cit.) additionally requires Council to defer its decision until: '*after consulting the Economic and Social Committee*'. After any necessary re-drafting of the proposals by the Commission, there follows the 'second reading' by the Council and the European Parliament. At the second reading stage, and any necessary subsequent stages, the ESC has no official input to the process. The Economic and Social Committee thus acts only in an advisory role, the ESC cannot block, or force amendments to, any legislative proposals.

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Measuring Instruments Directive. This is an example of how informed practitioners can help themselves, and others, by engagement with the system.

<sup>55</sup> N.5 above

<sup>56</sup> N.1, 3, 4 and 5 above

<sup>57</sup> N.7 above

It could be argued that, based on its advisory rather than executive role, the ESC has a lower level of involvement with the EC internal market technical legislative process than the Commission, the Council or the European Parliament. As a result the ESC may be likely to feel less ownership of the final legislation.

The ESC is not required to respond to Commission communications, indeed is not on the formal distribution list for Commission communications that are not proposals for legislation. The ESC can, however, within its Rules of Procedure (ESC, 1998a, 2002) prepare own-initiative Opinions. One such ESC Opinion (ESC, 1998b), in response to the Commission Draft Action Plan for the Single Market (Commission, 1997), is highly critical of both the state of the single market and the way that new barriers to the effective operation of the single market can be created. The motivation of the ESC in drawing up its opinion is unclear. Whatever the motivation there is clarity in their analysis of what they see to be the impediments to the realisation of an effective single market. Following the analyses there are some specific, well reasoned, recommendations advanced to attempt to alleviate the problems.

Among these recommendations one of particular significance from the perspective of single market practitioners being: *'It would be desirable to arrive at a more effective concept of harmonization, by envisaging, in certain fields where this approach would be appropriate, greater use of regulations rather than directives'*<sup>58</sup>. Such a proposal is quite radical in that it is contrary to Article 94 of the Treaty<sup>59</sup> but it is a proposal that is based on a reasoned argument concerning the effect of national derogations and transpositions that continue to impede the completion of the single market. In this context the ESC (ESC, 1998) makes reference to *'.. the "residual" powers left to Member States in the application of some directives can be very important (for example, the possibility of choosing among the products or substances listed at European level those which they wish to authorize on their territory).'* Thus, in 1998, the ESC was critical of options extended to the Member States about whether certain products were controlled, or not, on the grounds that the single market could only work if there were

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<sup>58</sup> The following distinction between regulations and directives is taken from Bainbridge (1998). *'A regulation is of general application. It is binding in its entirety and directly applicable in all Member States. A directive is binding as to the result to be achieved, upon each Member State to which it is addressed but leaves to the national authorities the choice of form and methods. The essential difference between a regulation and directive is that whereas the latter must be transposed into national law before entering into force, the former is directly applicable and therefore usually has direct effect.'*

<sup>59</sup> N.7 above

no controls or there was uniformity of control throughout the EC. The measuring instruments directive<sup>60</sup> adopted in 2004 contains just such an opportunity for distortion of the single market by the following inclusion: '*This Directive establishes the essential requirements that the devices and systems referred to in Article 1 have to satisfy if they are subject to legal metrological control in a Member State.*' From the perspective of an internal market practitioner it would appear that the ESC message appears to have gone unheeded by the Commission in particular.

Another Opinion of the ESC (2001) reports on the workings of the internal market in a more forthright and constructive manner than the Commission. The Commission (Commission, 2001a, 2001b, 2001c) reports in a matter of fact way, with some statistics including those of transposition deficits. The ESC (2001) report, however, makes a much more useful contribution to the debate; for example:-

*Problems relating to competition persist owing largely to differences and shortcomings in the transposition of European legislation into national law. Economic operators need to enjoy fair competition conditions regardless of where they do business.*

Here the ESC has gone beyond what is typically provided in Commission reports and attempts to analyse the effects of legislative failures.

Arguably Article 308<sup>61</sup> provides a possible means to bypass the requirement of Article 94 (op. cit.) to use directives for '*.. the establishment or functioning of the common market.*' It is beyond the scope of this research to consider the specific merits in this instance of the possible use of Article 308 and existing case law relating to Article 308. The purpose of highlighting Article 308 in this way is to suggest that even the ESC does not quite go as far as, perhaps, it could go in offering specific courses of action to alleviate the problems that it has identified.

Given that the ESC can only offer advice, opinions, is it their enforced detachment from any executive function that imparts the ability, courage even, to be more pointedly critical of the official view of the internal market than Council or the European Parliament? Alternatively, is it the level of relevant knowledge and expertise within the ESC, as compared to the relevant knowledge and expertise of Council members,

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<sup>60</sup> N.27 above

<sup>61</sup> N.7 above

European Parliament members, Commissioners and Commission officials that allows, or even causes, ESC reports to be better informed and focussed? It is not within the scope of this research to provide full answers to these questions.

It may be of significance that the composition of the ESC may have some influence on its outspokenness. A characteristic of ESC members, from the UK at least, is that there is no need for them to participate in any public campaign trail as is the case for those wishing to become Members of the European Parliament or Council, via ministerial appointment through government. The ESC, made up as it is of three groups of individuals drawn from employers, workers and miscellaneous interests organisations, can provide a route whereby experts can arrive close to the centre of Community power without first having to become either a politician or Commission official.

Much of this section has indicated that the ESC has been, and no doubt remains, prepared to produce reports critical of perceived shortcomings of the internal market. This independence has also been displayed in another, much less helpful, way. Within the ESC there exists a unit called the 'Single Market Observatory'. It is this unit that prepares publications entitled 'Monitoring the Single Market'. The Single Market Observatory (ESC, 1999) publication is particularly interesting in that it purports to come from the European Economic and Social Committee. Given that up to and including the Treaty of Nice<sup>62</sup> reference in the treaties is made to the Economic and Social Committee, a question that arises is "What was the formal mechanism by which the ESC incorporated the word 'European' into its title?" A written enquiry was made to the Directorate for Communications of the Economic and Social Committee about the inclusion of the word 'European' in their title. The eventual reply from Mr Andersen, a Principal Administrator within the Economic and Social Committee, explained that the word 'European' was not introduced into the title by any formal mechanism, but the purpose of the change was '*.. to avoid the common misunderstanding because of the French acronyms for the ESC and the ETUC being identical (le CES and la CES).*' The unofficial name European Economic and Social Committee is clearly being used in a widespread manner as evidenced by the web page [www.europa.eu.int/eur-lex/en/about/pap/process\\_and\\_players6.html](http://www.europa.eu.int/eur-lex/en/about/pap/process_and_players6.html) accessed 9 June 2003, this lists the institutions of the EU and includes the title European Economic and Social Committee.

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<sup>62</sup> N.5 above

The need to avoid possible confusion is recognised but the somewhat arbitrary, unilateral, change of name in this way by the ESC is difficult to condone. In practical terms actions such as this which break the obvious correspondence between the working name of the organisation 'European Economic and Social Committee (EESC)' and the electronic contact points [anynome@esc.eu.int](mailto:anynome@esc.eu.int) and 'www.esc.eu.int' make electronic contact with the institution more difficult than necessary.

From a process evaluation perspective unauthorised action such as the name change suggests that there is, at best, limited process control within the operations of the ESC.

The written enquiry made to the Directorate for Communications of the Economic and Social Committee also included a question about the languages used for publication of 'Monitoring the Single Market'. The pragmatism of the subterfuge used to avoid the need to publish in all EU official languages is illustrated in the following quotation from Andersen's reply: *'A booklet like the one referred to by you is not an official EU-document... Reducing the number of languages is the only realistic way of preparing "overview" booklets like the one in question.'*

The above comments on the behaviour of the ESC and their contribution to the EC internal market technical legislative process are drawn upon in Chapter 5.

### 3.2.3 EU INSTITUTION PROCEDURES

Within the Treaty<sup>63</sup> obligations are placed upon each of the European Union institutions to adopt their own Rules of Procedure. It is not the purpose of this research to examine, critically and in minute detail, each clause of the Rules of Procedure adopted by those EU institutions with a role to play in the European Community internal market technical legislative process. What is more important to this research is to establish whether the Rules of Procedure currently exist and how accessible they are to internal market practitioners.

Table 3.2 identifies; for each of the Commission, the Council, the European Parliament and the Economic & Social Committee; where their obligation to adopt Rules of

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<sup>63</sup> N.7 above



Table 3.2 Summary of information on EC institution Rules of Procedure

Institution	Treaty <sup>64</sup> Article Number Requiring adoption of Rules of Procedure	Institutions' web address for access to their Rules of Procedure	Current Edition of Rules etc
Commission	218 (2)	<a href="http://www.europa.eu.int">www.europa.eu.int</a> (Also in OJ 2000 L 308/26-34)	No edition number available, signed by the President of the Commission 29 <sup>th</sup> November 2000.
Council	207 (3)	<a href="http://www.consilium.eu.int">www.consilium.eu.int</a> or <a href="http://www.ue.eu.int">www.ue.eu.int</a> (On home page select Council of the European Union then select Council's Rules of Procedure) (Also in OJ 2002 L 230/7-26)	No edition number available, signed by the President of Council 22 <sup>nd</sup> July 2002
European Parliament	199	<a href="http://www.europarl.eu.int">www.europarl.eu.int</a> (On home page under References, select Rules of Procedure)	15 <sup>th</sup> Edition, October 2003
Economic and Social Committee	260	<a href="http://www.escc.eu.int">www.escc.eu.int</a> (On home page listed under Organisation, select Rules of Procedure)	No edition number available, dated July 2002

<sup>64</sup> N.7 above

Procedure arises in the Treaty (op. cit.), where the Rules of Procedure are accessible on the internet and additional information on current edition of the Rules of Procedure etc.

The Commission Rules of Procedure relate to the collegiate Commission itself rather than being a manual for Commission officials. Article 25 of these Rules of Procedure contains the following statement: *'The Commission may adopt supplementary measures relating to the functioning of the Commission and of its departments, which shall be annexed to these Rules of Procedure.'* It is at this level in the hierarchy that procedures to be followed by officials would be expected to be found. To date searches through the europa.eu.int website have failed to identify any such annexes. Direct enquiries to the Commission for information to identify these annexes have not, so far, been successful.

A limited number of specific questions related to training of Commission officials have been directed through the Commission representation in London, those responses gained have been of only limited value. The Commission has supplied a small number of documents, none of which contain data that can be used as reference to describe any specific training. One of these documents is, however, included as Annex IV.

The early part of the opening paragraph of this document (Annex IV) reads as follows: *'At the Commission it was decided that training in legal drafting called for by the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation ...'* and in the second paragraph it continues: *'A number of the Commission's Legal Revisers have been given courses in training techniques. They have now started giving the actual drafting training.'* It is unclear from the above what, if any, formal training of legislative drafters was provided prior to 1998.

The second page of Annex IV, providing as it does a list of 'Rules on Drafting' appears at first sight to be helpful. Ready access to the documents on the list of 'Rules of Procedure' would be helpful. The 'Rules of Procedure' document referred to above is undated, but it is assumed to be of 2001 vintage, or later, because of reference in it to the 2001 Manual of Precedents (Council, 2001a) document. By the time this author became aware of the 'Rules of Procedure' document all but the 'europa'

website addresses provided were no longer accessible, a problem that is taken up again in Section 5.2.1.2. Together the documents would have provided a *corpus* of knowledge that could have been of considerable benefit to outsiders, such as internal market practitioners, as well as to Commission and other EC institution members and officials. However, the overall value of documents such as that contained in Annex IV is low since there is no practical way that an outsider, such as an internal market practitioner, can access the latest versions of the documents on an as needed basis.

It is evident from Table 3.2 that Rules of Procedure as required by the Treaty<sup>65</sup>, for the EC institutions concerned with the EC internal market technical legislative process, exist. Not only do they exist but they are currently available from EC institution websites which makes them available to EC internal market practitioners. Coupled with Article 251 of the Treaty (op. cit.) these Rules of Procedure provide, for EC internal market practitioners, a sufficient description of the overall process except for the work that is carried out by Commission officials, particularly in the early stages of drafting new legislation. With the current lack of access to the Commission officials' procedures there can be no confidence that Commission officials are required to, and actually, consult widely outside of the EC institutions in the early stages of legislative drafting.

An example of the acceptance of inconsistency by an EC institution is evident in the ESC Rules of Procedure. Part I of these Rules of Procedure basically outline the genesis of the ESC by quoting relevant parts of treaties up to and including the Treaty of Nice<sup>66</sup> – these quotes make reference to an Economic and Social Committee. The final line of the preamble to Part II of the Rules of Procedure makes reference to their unofficial title European Economic and Social Committee. General confidence in EC institutions is not enhanced when they exhibit this type of inconsistency and disregard for the treaties.

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<sup>65</sup> N.7 above

<sup>66</sup> N.5 above

### 3.3 Non European Community institution literature

Within Sections 3.2.1 and 3.2.2 the views on the operation, or completeness, of the EC internal market from the EC institutions involved in the generation of internal market technical legislation were discussed. In contrast, within this Section, the views expressed by various sources external to the EC institutions are introduced and discussed.

#### 3.3.1 JOURNALS AND BOOKS

In 1994 an independent expert group was established by the Commission to report on legislative and administrative simplification. This group was known as the Molitor Group after its Chairman. The terms of reference of the Molitor Group (Molitor, 1995, Annex III) includes a requirement to examine the state of Community and national legislation with regard to employment and competitiveness. Within the final report (Molitor, 1995) a number of general, and small and medium sized enterprise (SME) specific proposals, are advanced. The impact of all of these proposals on subsequent Community and national law cannot be directly assessed. Molitor's starting assumption, of a completed single market, is in line with the view of the single market advanced by the Commission. The discussion in Section 3.2.1 would suggest that such an assumption is flawed. The as yet incomplete single market does not allow simplification of legislation while maintaining completeness of the single market as an objective. From a process standpoint it could be argued that it would have been more useful to have worked to alternative, hierarchical, objectives such as:

1. What Community and national legislation is needed to complete the establishment of the single market?
2. How can the legislation to achieve 1. above be made as simple as possible?

The final report from the group of independent experts (op. cit.) is of some value even though its preface contains caveats explaining the lack of overall consensus, the lack of consensus leading to the inclusion of several minority statements. Eighteen general proposals for action are made. Of these eighteen proposals five are of particular significance from a process perspective. These five proposals fall into two distinct

groups. The first group, of four proposals, relate to the process before any legislative act is adopted. These proposals are reproduced below:

*Proposal 5*

*When drafting a new piece of legislation, the Commission must ensure that a study is carried out on its incorporation into Member States' national legislation and publish the findings of the study.*

*Proposal 8*

*Consultation with those who are concerned by new regulations, in particular consumers, business and workers, should be effective, systematic, and carried out in due time.*

*Proposal 9*

*The explanatory memorandum of all new proposals should indicate the expected impact on employment and competitiveness, costs and innovation.*

*Proposal 15*

*The Community should consider whether there are areas in which Community regulation (as an alternative to directives) would provide the best reconciliation of simplification and single market objectives.*

Given the Article 251 process<sup>67</sup> then any actions taken under Proposals 5, 8 & 9 above would be expected to be completed and available at the time any original Commission proposal was submitted to the European Parliament and Council. As at year 2000, using the proposal for a Measuring Instruments Directive (MID) (Commission, 2000b) as the indicator, there is no evidence that Proposal 5 has been acted upon. For Proposals 8 and 9 there is some, but unconvincing, supporting information included in the draft MID that might be used to claim that Molitor's proposals had not been completely ignored.

Proposal 15 above is consistent with suggestions from the Economic and Social Committee (ESC, 1998b). However no suggestions as to how such a radical change from the use of directives to regulations for control of the internal market could be accomplished is offered. For the internal market in goods no reasoned response to these proposals has yet been issued, it is possible that the only externally detectable response would be in the overall format of future legislative proposals.

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<sup>67</sup> N.7 above

The second group of proposals, in fact only one proposal, relates to the process after the adoption of a legislative act. This proposal is reproduced below:

*Proposal 13*

*The Commission should take a vigorous and active approach to auditing transposition and enforcement of EC legislation at national level in order to avoid, in particular, that national legislation or practices hamper the unity of the Community market. The strengthening of the enforcement unit should be considered by the Commission in this context.*

It has already been noted, in Internal Market Scoreboards (Commission, 2001a,c), that auditing of transposition is now carried out, but effective follow-up to deficiencies found by such auditing, in line with Molitor's proposal for '*active approach to ... enforcement...*', has not yet been adequately addressed. Internal Market Scoreboard 12 (Commission, 2003) admits to a rise in the transposition deficit and Internal Market Scoreboard 13 (Commission, 2004) suggests that for the European Union of fifteen Member States the transposition deficit has stabilised over the previous twelve months at around 2.3%

Whilst it is not central to this research it is perhaps worth noting that a practical difficulty arises in tracking the responses to, or assessing the effects of, reports such as that from Molitor (1995). This author has been unable to identify any considered response from the Commission, be it acceptance in whole or part or outright rejection of the Molitor proposals.

Dannenbring (1999), as a lawyer working in the Representation of the German Confederation of Skilled Crafts & Trades to the European Union, brings an interesting perspective to the internal market debate. In common with Molitor (1995) Dannenbring starts from the not fully substantiated premise that the single market is complete. Evidence of this belief is provided by the following quotation: '*The effect of the completion of the Single Market was double-edged. On the one hand the dismantling of all cross-border trade barriers and the harmonisation of national regulations within the Community ....*'. Dannenbring clearly expresses disappointment in Molitor's work by his comment: '*... this commission did not focus its work around analysing the relationship between simplification on the one hand and competitiveness and employment on the other.*' Dannenbring expresses further concern in his comment '*... representatives of the European SME business community were not part of the group.*

*Nonetheless, the group devoted a special chapter of the report to SMEs*'. However, in Dannenbring's view, it was the overall failure of Molitor that made a significant contribution to the way a subsequent Commission initiative SLIM<sup>68</sup> (Simpler Legislation for the Internal Market) was established (Commission, 1996a).

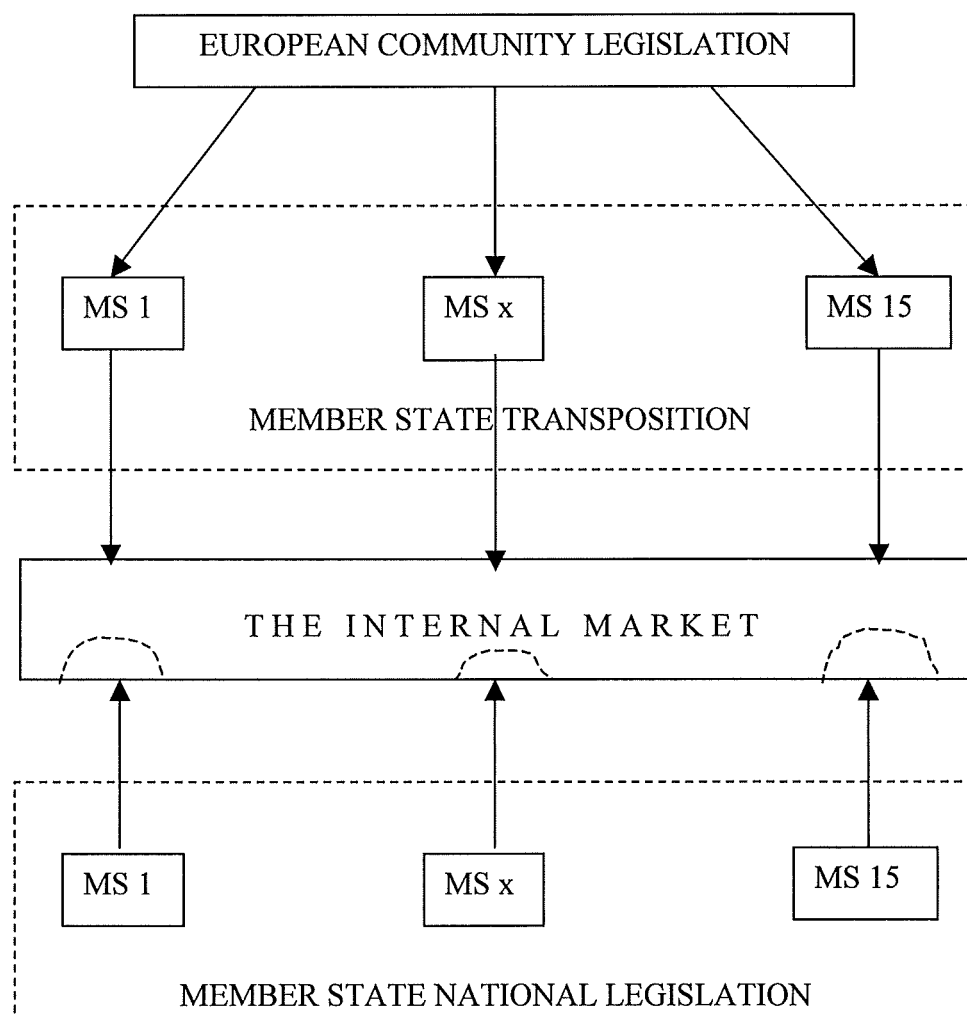
Dannenbring compares and contrasts the workings of Molitor and various SLIM groups, being somewhat critical of Molitor's failure to stay on track, and supportive of the SLIM groups' self-imposed restrictions on their mandates. The self-imposed restriction resulted from the perceived inability of the SLIM groups to deal adequately with both Community and Member State national legislation, each of which has implications for the internal market. The SLIM groups made it clear that, in the time allowed for their tasks, they were only able to deal with Community legislation and did not have time to deal with the plethora of Member State national legislation. The outcome of the SLIM groups (Commission, 1996b), noted by Dannenbring as: *'... the burden of unnecessary legislation undermining the competitiveness of business is far greater at national than Community level. In everyday business life, enterprises in Europe often feel hampered not so much by regulations stemming from the EU but more by regulations of national origin.'* This suggests that national regulations counter the positive influences towards harmonisation from the Community institutions.

It is of value to view diagrammatically, as shown in Figure 3.1, the intellectual construct of the internal market to better understand the, often opposing, forces acting on the construct. The forces to build a strong internal market emanate from European Community legislation with the expectation that this legislation will be correctly transposed into Member State legislation without also creating any internal market distortions. Member State, nationally initiated legislation can only degrade rather than enhance the integrity of the internal market because nationally initiated legislation creates, rather than removes, perturbations in what is intended to be the internal market 'level playing field'.

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<sup>68</sup> N.46 above

**Figure 3.1 Showing the internal market construct and the legislative forces acting on it**



Note: 'MS' represents Member State and 'x' can have values from 2 to '15' inclusive.

The process for the generation of internal market legislation is that described in Article 251 of the Treaty<sup>69</sup>. Earnshaw and Judge (1995) describe the application of Article 251, codecision, as an extremely intricate procedure but *'of fundamental importance to public perceptions of Parliament's role: it can no longer be accused of lacking teeth'* – quoted from Corbett (1994).

Earnshaw and Judge's analysis (1995) of the Article 251 (codecision) procedure concludes that the European Parliament can now exert real influence over legislative decision making. From a practitioners' perspective this holds out hope that lobbying<sup>70</sup> of the European Parliament in Brussels and Strasbourg can have an effect on the

<sup>69</sup> N.7 above

<sup>70</sup> Some additional illustrations of lobbying are provided in Section 2.3



outcome of legislative proposals. The working practices of Parliament are such that the power-house is the Parliamentary Committees and their Rapporteurs<sup>71</sup> appointed for each individual proposal for legislation. Individuals and organisations, both national and pan-European, can target their lobbying to the appropriate Rapporteur, in an attempt to influence the outcome of any specific legislative proposal. Evidence, in the form of unpublished correspondence from CECIP and CECOD, pan-European trade associations for weighing instruments and fuel dispensing equipment respectively, exists to indicate that direct approaches to European Parliamentary Rapporteurs have been made.

It is not possible to be sure how much influence any individual submission for revision to legislative change proposals achieves. This is true even if all of the suggestions for revision from any given organisation are incorporated into the final text – but at least the process appears to be open and democratic.

It is important to remember that the Rapporteur, Parliamentary Committee, EP Plenary session sequence is expected to occur twice for any given legislative proposal. The first time through the procedure deals with the initial proposal as received from the Commission – first reading. The second time through the procedure deals with the ‘common position’ achieved by the Commission’s consideration of responses from EP, Council and ESC to the original proposal.

Earnshaw and Judge (op. cit.) provide an indication of the influence, within the EP plenary sessions, of Parliamentary Committee reports when these reports are in support of proposals. However, when common position, second reading, amendments are proposed to the EP in plenary session there is a difficult detailed requirement to be met – an absolute majority of MEPs has to be in support of any such amendment and this majority of MEPs must be present for the vote. The power and resolve of Parliament is, therefore, much more seriously tested at second reading. From a process perspective, effective lobbying would have to be much more broadly based across the MEPs than at first reading – such a requirement may well be beyond the means of all but those organisations with permanent representation in Brussels.

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<sup>71</sup> The reader is referred to the list of Definitions on page x

A review of the regulatory process has been undertaken by Majone (2000). The review is of considerable value in that it includes some radical approaches to some fundamental problems. Of concern to Majone is the underlying problem of credibility of the way the European Community has approached many of its problems. He is critical of the new approach to technical harmonization and reliance on mutual recognition, brought about in the 1980s in an attempt to move forward the stalled internal market. The introduction of the new approach is seen almost as a public relations move rather than as an attempt to attack the underlying problems of the internal market. In this context Majone is particularly concerned at what he sees as a dilemma related to new approach directives, the relationship between directives and standards. Directives are Community legislation and standards, emanating from independent European standardization organisations, are only voluntary.

What is missing in Majone's analysis is a clear recognition and understanding that there are two classes of standards available from the European standards organisations. The first of these two classes includes the traditional standards, such as those for pipe threads, these exist to ensure compatibility between items. The second of these two classes are 'harmonised standards', these are important in that they have a special legal status that provides an automatic presumption of conformity to directives that are formally linked to the standard. Harmonised standards are produced by the European standardisation organisations in the same way as traditional standards but with three additional process steps. These additional process steps are; firstly a mandate from the Commission to the appropriate European standardisation organisation to prepare a standard, i.e the first part of the link between a directive and a standard, secondly a review near the end of the process by a Commission appointed expert to assess the draft standard and thirdly, if the expert assessment was satisfactory, to publish in the Official Journal a reference to the standard, the final part of the link. Harmonised standards are important because, while still voluntary, they provide a legal link to directives, and the standardisation process from which they emanate is open and transparent to all of those wishing to participate – this includes the opportunity for legislators to fully participate.

The introduction of the new approach to directives and associated harmonised standards was an attempt to find a better way forward for the internal market in goods starting from the late 1980s. From a manufacturing practitioner's perspective the new approach is clearly an improvement on the earlier process that excluded all but the legislators in

the determination of the technical specifications. Further process improvement would be welcome and Majone (op. cit.) concisely defines the situation within which progress needs to be made:

*The challenge to Europe is to design institutional arrangements capable of fostering close working relationships with national regulators, European institutions, and with international organisations, while avoiding the major defects of the comitology system: opaque procedures, poor accountability, and lack of effective co-ordination of sectoral responsibilities with broader horizontal concerns.*

Can such a challenge be met in practice? A possible model to meet the challenge as proposed by Majone is that of the 'agency'. An agency would be independent of government, the EC institutions in this case, but with authority for rulemaking and to take final and binding decisions. Majone (op. cit.) is critical of what he describes as the '*fragility of the EC regulatory system*' because of its politicisation but goes on to suggest an amendment to Article 7<sup>72</sup> that would empower the existing EC institutions to establish new bodies, agencies, to facilitate the efficient functioning of the internal market without the need for Inter Governmental Conferences to amend the treaties. In the absence of additional amendments to the internal market articles of the treaties such bodies as Majone envisages could not work because of the requirements of subsidiarity and the involvement of the European Parliament in the processes. What is significant, however, in Majone's proposals is an apparent acceptance that a mere tinkering with the current processes is not enough and that a radical re-engineering of the legislative process appears to be necessary. While the agency model discussed by Majone provides a useful reference point there are no other institutional equivalents to the present structure of the EC from which 'best practice' can be directly drawn.

It is not the purpose of this research to even attempt to analyse in depth the European Court of Justice case law on free movement of goods. However, Barnard (2001) provides a helpful insight into the way Article 28<sup>73</sup>: '*Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.*' can influence the internal market. According to Barnard's classification system (Barnard, 2001) national regulatory laws can give rise to different regulatory burdens because an imported good may have to satisfy a dual regulatory burden (home state and host state regulations), with the additional cost that this entails. If, therefore, Barnard's

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<sup>72</sup> N.7 above

<sup>73</sup> N.7 above

analysis is correct then even Member State social legislation, for example the UK Disability Discrimination Act (DDA)<sup>74</sup> can become a measure having an effect equivalent to quantitative restrictions since it can create a dual regulatory burden. The structure of forces acting on the internal market are shown in Figure 3.1 which was originally drawn to indicate how Member States could intentionally distort the internal market by national legislation. It would appear, from Barnard's analysis, that internal market distortions can be created, sometimes accidentally, from any source of national legislation that creates a dual regulatory burden.

There is no evidence to suggest that the introduction in the UK of the DDA was a move intended to distort the internal market. It is clear in the case of the DDA, that the circumstances of the use of a product can influence the technical requirements of the product itself and hence create a distortion of the internal market. An hypothetical example to illustrate this point could be the use of a card reader for credit/debit card sales on a retail petrol filling station open to the general public. For a card reader designed in another Member State it could have been designed in such a way that the card reader slot was outside (above) areas of explosion risk created by petroleum vapours – petroleum vapours being more dense than air sink towards the ground. The influence of the DDA on the use of this card reader in the UK could then be such that, to allow wheelchair users access to the card reader the card reader needs to be lower than its design height. Bringing the card reader slot lower may then bring it into a higher explosion risk area. The additional explosion risk must now be addressed by a design change to the card reading equipment so that it continues to meet the requirements of the Article 95 potentially explosive atmospheres directive<sup>75</sup>. Social legislation in any given Member State can effectively distort the EC internal market.

The criticisms noted earlier (Commission, 1997)(ESC, 1998b) indicating that national regulations produce greater impediments than Community regulations to the satisfactory completion of the internal market were non-specific about the purpose of the national regulations in question. From the above it appears that the Member State regulatory impediments to the satisfactory completion of the internal market could be deliberate, protectionist, or accidental stemming from social or environmental requirements.

<sup>74</sup> Disability Discrimination Act 1995

<sup>75</sup> Directive 94/9/EC of the European Parliament and the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres, OJ 1994 L 100/1-29

National regulations have been identified as an impediment to the satisfactory completion of the internal market. Are there any procedures in place intended to prevent the establishment of such regulations?

There exists a directive<sup>76</sup> that lays down a procedure for notification<sup>77</sup>, to the Commission and to the other Member States, of proposed Member State national technical legislation. Such notification procedures do not apply to Member State transpositions of directives, thereby creating a situation that leaves transposition open to abuse by the 'gold plating', for nationalistic purposes, of directives as they are adopted into national legislation. The procedure of this directive (op. cit.) is designed to allow the Commission and individual Member States to object to national measures that are seen as likely to distort the internal market. Figure 3.2 outlines the flow of information and comments between Member States and the Commission under the directive's procedure. Such procedures can only work effectively if Member State government officials are aware of them and follow them.

It is important to recognise that the basic procedures of the directive (op. cit.) were first established in a 1983 directive<sup>78</sup> and therefore the basic procedures have been in existence for approximately twenty years. This author's experience of the procedures of these two directives since 1985 suggests that the link between the notification point of each Member State and the Commission is the only part of the procedure that works efficiently. Within the UK, what little evidence is available suggests that officials within government departments, other than of the Directorate of the Department of Trade and Industry that contains the UK notification point, are not well informed of the requirements for notification. Even if the requirements for notification are understood it is possible that not all government officials would necessarily accept that their legislative measures could impinge upon the internal market and would therefore not activate the notification procedure.

The overall process for the adoption of internal market legislation exists at several levels. At the top level the definition of the current process was established by the

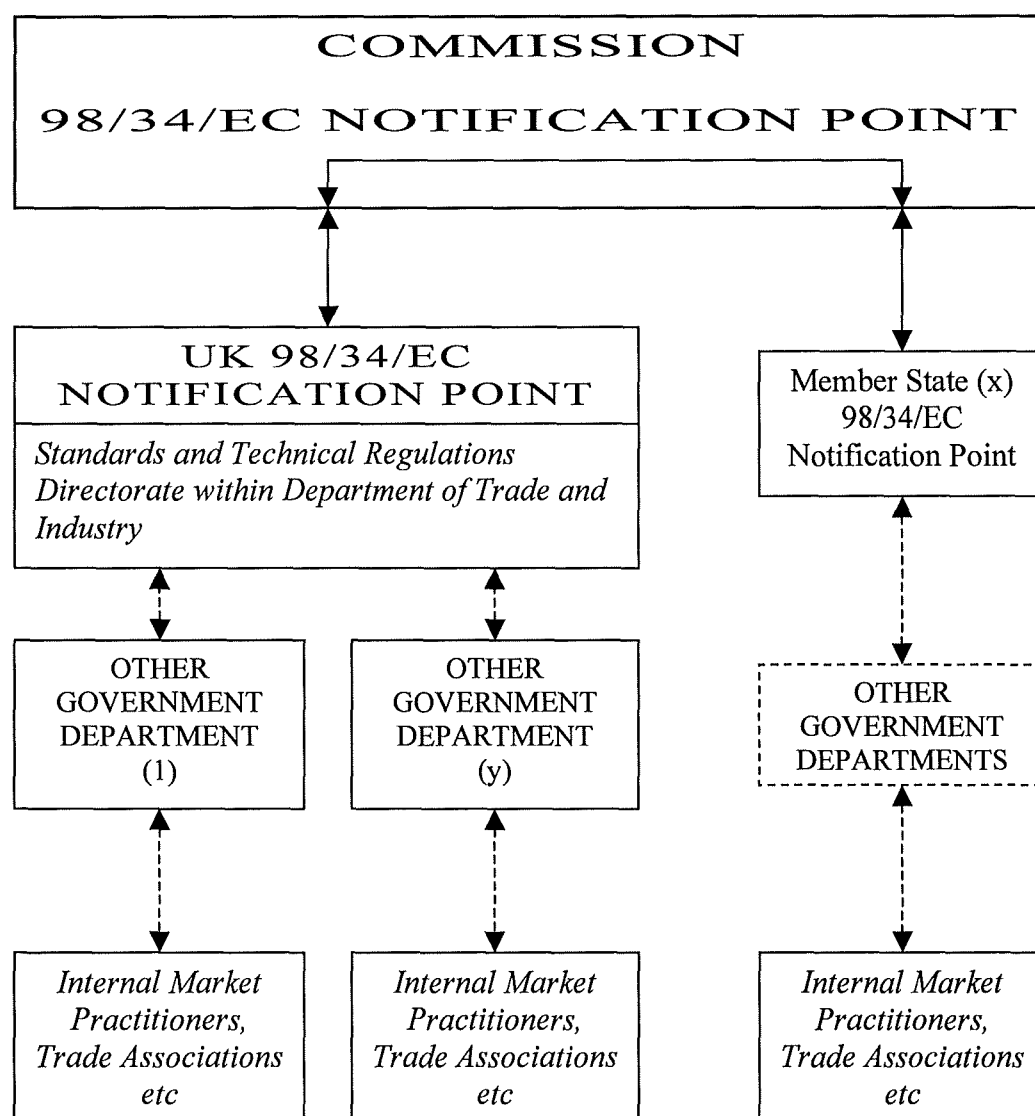
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<sup>76</sup> N.22 above

<sup>77</sup> Sometimes colloquially known as the notification procedure.

<sup>78</sup> N.21 above

Figure 3.2 Showing information flows for the 98/34/EC notification procedure



- Notes: 1. Member State (x) represents each of the non UK Member States  
 2. Other government Department (y) represents each of an unknown number of other government departments

introduction of Article 189b, via the Treaty on European Union<sup>79</sup>. The process there described remains the current process. For the purposes of this research the Article 189b (op. cit.) process was not significantly altered by the adoption of the Treaty of Amsterdam<sup>80</sup> nor by the Treaty of Nice<sup>81</sup> other than by change of Article number to Article 251. Dashwood (1994) provides an extensive review of the Article 251 (Codecision) process that includes many conjectures about how a legislative proposal

<sup>79</sup> N.3 above

<sup>80</sup> N.4 above

<sup>81</sup> N.5 above

may progress depending on actions taken by the European Parliament and/or Council. The Treaties of Rome<sup>82</sup>, Maastricht<sup>83</sup>, Amsterdam<sup>84</sup> and Nice<sup>85</sup> have each followed tradition in that they are text only documents. In his review Dashwood (1994) suggests that some, at least, of the potential problems with the process described by Article 251<sup>86</sup> follow directly from a lack of precision in the text. The various intellectual 'What ifs?' that are identified are each capable of resolution before they are called into play. Process flowcharts for use within manufacturing environments and flowcharts as a high level design for software descriptions have been utilised for many years. Such flowcharts are concise in their descriptions and hence easy to translate into the various EC official languages, are easy to follow and are deterministic. Other than for EC and other officials coming to terms with a technological leap forward there appear to be no obvious reasons why some parts of the treaties, those parts of the treaties that attempt to describe a process rather than a concept, should not be written in flowchart form to make them deterministic rather than interpretive. Internal market practitioners, other practitioners and those involved formally with the legislative process would then be able to follow the process more readily and hence be better equipped to make appropriate inputs.

Visits to the 'europa' website (EU, 2003) provided access to a link 'Legislative flowchart – codecision procedure'. On each of several attempts to view this flowchart the page has been blank. The fact that links to a flowchart now exist, even though the flowchart itself does not yet exist should be seen as a step forward. The fact that the web page where the flowchart should be available remains blank is of concern. No reason for the blank page was provided. There is a suspicion that the failure of the EU institutions to make public the process that is used derives from an unwillingness to admit that it is different from the flowchart of Figure 2.1, a flowchart that was constructed from the words of Article 251<sup>87</sup>.

Within his conclusions Dashwood (1994) makes three comments that are of significance from a process perspective, the first is an indictment of the drafters of the treaties '*...the Treaty on European Union has rendered an already complicated system of decision-*

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<sup>82</sup> N.1 above

<sup>83</sup> N.3 above

<sup>84</sup> N.4 above

<sup>85</sup> N.5 above

<sup>86</sup> N.7 above

<sup>87</sup> N.7 above

*making, under the EEC Treaty as amended by the SEA, very considerably more so'.* The second comment is really more of a plea: *'... it must surely be one of the objectives of the review of institutional arrangements in 1996 to simplify and rationalise the Community's legislative procedures, so as to make them intelligible to the citizens of the European Union'.* For internal market legislation, currently enacted through the process of Article 251<sup>88</sup>, the process remains broadly similar to the process in place following the adoption of the 1992 Treaty on European Union<sup>89</sup>. Dashwood's comments appear to have been unheeded. Dashwood's first two comments and the failure of subsequent treaties<sup>90</sup> to make more intelligible the Community's legislative procedures are not entirely in keeping with the 1993 Council Resolution on the quality of drafting of Community legislation<sup>91</sup>. Within this Council Resolution (op. cit.) paragraph (1) reads *'the wording of the act should be clear, simple, concise and unambiguous; unnecessary abbreviations, 'Community jargon' and excessively long sentences should be avoided.'* In contrast to the above criticisms Dashwood's third process comment, that *'the Article 189b procedure enables the Parliament directly to influence the final outcome'* provides some encouragement to practitioners to directly engage in the overall process via the structures of the European Parliament as already discussed.

The basic message of the 1993 Council Resolution (op. cit.) was reinforced by Declaration 39 appended to the Treaty of Amsterdam<sup>92</sup>. The first part of this Declaration reads *'The [Inter Governmental] Conference notes that the quality of drafting of Community legislation is crucial if it is to be properly implemented by the competent national authorities and better understood by the public and in business circles.'* Since Article 251<sup>93</sup> was not re-worded in such a way to be totally clear it would appear that the contents of Declaration 39 are not specifically directed at, or seen as applicable to, the drafters of the treaties – an opportunity to set a good example from the top was thereby wasted. In this context the earlier comments indicating the use of the phrases common market, single market and internal market all apparently for the

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<sup>88</sup> N.7 above

<sup>89</sup> N.3 above

<sup>90</sup> N.4 and N.5 above

<sup>91</sup> Council Resolution of 8 June 1993 on the quality of drafting of Community legislation, OJ 1993 C 166/1

<sup>92</sup> N.4 above

<sup>93</sup> N.4 and N.5 above



same concept suggests that there is no overall demonstrable commitment to high quality drafting of legislation within the EU.

In his exposition on the Article 251, codecision, procedure Usher (1998) begins by suggesting that the cooperation procedure, Article 252<sup>94</sup>, is a procedure of Byzantine complexity and the codecision procedure is even more so – general sentiments in accord with those of Earnshaw and Judge (1995). With the process complexity in mind, coupled with the added comment from Usher (1998) that ‘... *the terminology originally used in the Single European Act gave rise to different nuances in different language versions,*’ and other process uncertainties some proposals for process improvement might be expected. No such proposals are in evidence.

From the perspective of internal market practitioners important process questions that remain are: after the Commission has first put forward its proposals for legislation when, and to whom, can inputs be made by practitioners that may influence the outcome of proposals? Usher’s review (1998) provides little procedural help to individual practitioners with the above questions. Without satisfactory answers to these questions the legal details of the process are of limited concern to individual internal market practitioners.

A possible view held by internal market practitioners is that the internal market is indeed a ‘level playing field’. There is some evidence that this expectation is not always met in practice. Community environmental legislation, or in some instances the lack of such legislation, can create distortions of the internal market. An example of such distortion is available from a consideration of environmental legislation to deal with pollution from volatile organic compounds (VOC). Stage I Vapour Recovery<sup>95</sup> is a control measure to deal with a particular subset of the VOC pollution problem. European Community legislation in the form of a directive<sup>96</sup> that uses as its legal base old Article 100a (New Article 95) the internal market, was adopted and Stage I Vapour Recovery control measures became mandatory throughout the EC. Stage I control

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<sup>94</sup> N.4 above

<sup>95</sup> Stage I Vapour Recovery is intended to prevent the escape into the atmosphere of those petroleum vapours that are displaced when storage tanks at petrol filling stations are re-filled.

<sup>96</sup> European Parliament and Council Directive 94/63/EC of 20 December 1994 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations, OJ 1994 L 365/24-33

measures in the UK were introduced by UK regulations<sup>97</sup> that implement the stage I directive. As far as is known Stage I Vapour Recovery measures have not caused distortion of the internal market. Stage II Vapour Recovery<sup>98</sup> is a control measure to deal with a different, but highly adjacent, subset of the VOC pollution problem.

Commission work towards a proposal for European Community legislation for Stage II Vapour Recovery was undertaken in the mid 1990s but was dropped before any formal proposal was put before the European Parliament and Council. At the time that the work on a Stage II Vapour Recovery proposal was discontinued by the Commission it proved impossible to obtain a definitive reason for the work being discontinued. However, two, unofficial, reasons were offered by a Commission official to this researcher in his role as Technical Consultant to the Petrol Pump Manufacturers' Association – a UK based trade association. The first reason put forward was that it was proving impossible to gain technical agreement on the requirements for Stage II Vapour Recovery among the Member States and the second reason was that this area of legislation was suitable to apply the principle of subsidiarity.

With the Stage II Vapour Recovery situation as described there are certainly two possible alternative approaches for a way forward. To legal practitioners it might be that a legal challenge could, or possibly should, be initiated on the basis that goods lawfully produced and marketed in one Member State (UK) should be accepted in every other Member State, the principle of mutual recognition (Kent, 2000) of product standards established by the 'Cassis de Dijon' judgement of the European Court of Justice (Case 120/78). To manufacturers, many of whom are small with limited resources and have a need to get their products to market quickly, the legal challenge route is not really a practical option – even if they are aware of it. Thus to many manufacturers the necessary pragmatic approach to life within, or serving, the EC internal market comes down to the following options – build products to satisfy the requirements of the most stringent regulations to be found within the Member States or have more than one version of a product. The very suggestion that a choice between the above options may be necessary does not reflect well on the processes establishing the EC internal market for goods.

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<sup>97</sup> The Environmental Protection (Prescribed Processes and Substances Etc.)(Amendment)(Petrol Vapour Recovery) Regulations 1996, SI 1996/2678

<sup>98</sup> Stage II Vapour Recovery is intended to prevent escape into the atmosphere of those petroleum vapours that are displaced when motor vehicles are re-fuelled.

Usher (1998) draws attention to both the extended Community competence as the European Economic Community (EEC), as originally described<sup>99</sup>, has developed and to the restriction on Community activity through the principle of subsidiarity. The principle of subsidiarity was established thirty-five years after the establishment of the EEC by Article 3b of the Treaty on European Union, and was re-affirmed as Article 5 in the Consolidated text following the Treaty of Amsterdam<sup>100</sup>. The text is reproduced below:

#### Article 5

*The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.*

*In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.*

*Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.*

As at August 2004 the United Kingdom has not introduced legislation requiring the installation and use of Stage II Vapour Recovery systems at petrol filling stations – although a UK government consultation document (DEFRA, 2002) has been issued. Other Member States, most notably Austria and Germany, have in place Stage II Vapour Recovery legislation. In these Member States petroleum fuel dispensing equipment without a properly functioning Stage II Vapour Recovery system is not allowed to operate. Thus equipment that is legitimately on the market in the UK would not be acceptable to the Austrian and German sectors of the internal market. An unevenness in the internal market has been allowed to occur and tends to support Usher's argument (1998), '*... that any difference between national regulatory frameworks may distort competition in the Community.*' and the concept of mutual recognition for products legally on the market in one Member State being accepted in all other Member States fails.

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<sup>99</sup> N.1 above

<sup>100</sup> Consolidated Version of the Treaty Establishing the European Community, OJ 1997 C 340/173-308

A possible defence for the creation of such a situation may exist in Article 30<sup>101</sup> which allows: *'restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans ...'*. The fundamental problem is that the Commission has failed in its duty to provide legislation to foster, rather than harm, the internal market.

Stage I and Stage II Vapour Recovery requirements are not just concepts, they are each also physical systems that are available on the internal market. Manufacturing practitioners have some difficulty in reconciling the radically different approaches by the Community to such similar problems. In the case of Stage I Vapour Recovery there is no distortion to the internal market, whereas Stage II Vapour Recovery clearly creates internal market distortions.

The forgoing suggests that there can be a fundamental incompatibility between the effective operation of the internal market and the principle of subsidiarity. From a process perspective subsidiarity effectively means that to have any prospect of influence on the creation of a level playing field within the Community for their products a manufacturer must engage with, and convince, the legislators of each Member State to adopt technically similar regulations. Via this process there is no guarantee of successfully creating the required level playing field. To engage in this process at all a manufacturer is likely to require the deployment of high levels of skilled resources over an extensive time frame. This is in stark contrast to that same manufacturer's legitimate expectations of the Community's internal market where the playing field is expected to be level, albeit the actual level will be set by the appropriate Community legislation.

The intricacies and uncertainties of the codecision process as laid down in Article 251 (op. cit.) have been extolled by Earnshaw and Judge (1995) and Usher (1998). Shackleton (2000) states that in reality the overall codecision process can involve an additional informal, undocumented, procedure known as trialogue meetings. Trialogue meetings are attended by members of the Council and the Commission each at 'official' level and the European Parliament by the Rapporteur and Chair of the appropriate committee. Inter-institutional meetings, such as trialogue meetings, that take place in the interests of efficiency and expediency in assisting the passage of legislative acts that are caught by dispute after second reading serve a useful purpose. Such meetings do

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<sup>101</sup> N.7 above

give rise to a measure of concern as a result of their lack of transparency. The existence of this process step, not included within the Article 251<sup>102</sup> procedure, may be at least part of the reason why the 'Legislative flowchart – codecision procedure', discussed earlier remains unpublished. The dilemma about what to publish as a flowchart of the procedure may continue to exercise the collective minds of the EU institutions.

From his vantage point within the Secretariat of the European Parliament Shackleton provides a useful insight into the workings and operational benefits of the trialogue system. From a process perspective the introduction of this extra procedure, outside of the procedures laid down by the Treaty<sup>103</sup> is of concern because it is an almost clandestine procedure. It begs the question 'How many similar deviations from the rules have been introduced?' and by what authority do two of the major EC institutions work outside of the Treaty provisions. Irrespective of how useful to the overall process the introduction of the additional procedure may be, its existence suggests an apparent disregard for the operating rules at a high level in the process hierarchy. An apparent disregard for the operating rules at a high level in the process hierarchy suggests that internal market practitioners and others may not be treated openly and fairly by lower level procedures administered by the EC institutions.

If the EC legislative system is to grow 'organically' through the introduction of new procedures, by and for the convenience of the EC institutions, then it should be done openly and formally. One way that this could be achieved is to have the legislative process accredited in some way to the internationally recognised quality management system ISO 9001 (ISO, 2000) with its requirement for continuous process improvement. Who would be in a position to act as the assessor for the accreditation of such a pan-national high-level system would doubtless give rise to much debate. Majone (2000) with his concept of agencies may be of some value in this debate.

The current message from the actions of the participants in the top level process, the EC institutions; the Council, the European Parliament, the Commission and the Economic and Social Committee, is not a message of exemplary compliance. A legitimate expectation is that the top level participants would comply with the law, the treaty provisions, or have the law changed to allow expedient progress within the law.

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<sup>102</sup> N.7 above

<sup>103</sup> N.7 above

As at April 2002 an additional process problem made itself evident as the draft Measuring Instruments Directive (MID)(Commission, 2000) was negotiating the codecision process. The European Parliament issued its report (EP, 2001) following its first reading of the draft MID. A few months later, prior to any action being taken by Council, the Commission issued an amended proposal for the MID (Commission, 2002a) exercising their right, established by Article 250 (2)<sup>104</sup>, to amend their proposal at any time before Council takes action.

Due to lack of clarity in the Treaty (op. cit.) it is unclear, in taking the Article 250 (2) action, which of the following two apparently obvious situations obtains – there may be other, less obvious, interpretations for the way forward. The first situation would be for the European Parliament to go back for another first reading and submit a report to Council, and the second situation would be for Council to consider the new proposal together with the report from the European Parliament and opinion from the Economic and Social Committee related to a different proposal. The distribution of the amended proposal (Commission, 2002a), as listed on [www.europa.eu.in/prelex](http://www.europa.eu.in/prelex), provides only limited help. The original proposal (Commission, 2000) was sent, as required by Articles 95 and 251 to Council, the European Parliament and the Economic and Social Committee with an advisory copy to the Committee of the Regions; the revised proposal was sent only to Council and the European Parliament.

From the document distribution described it is not possible to determine, with certainty, what procedure will follow. It has been shown that there is a lack of clarity in the Article 251, codecision, procedure as a result of Article 250 (2) being invoked by the Commission. There is the already admitted Byzantine complexity of the codecision procedure, and there exists an unauthorised procedure. Together these do little to suggest anything other than that the EC internal market technical legislative process is not well controlled.

This author attended, as an invited participant, a meeting convened by the European Parliament Rapporteur for the MID some few weeks after the issue of the Commission's amended proposal (Commission, 2002a). The Rapporteur's purpose was to meet with a limited number of UK industry based internal market practitioners in an endeavour to determine what effects the MID in the revised form might have on their industries and

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<sup>104</sup> N.7 above

to solicit suggestions for Parliamentary amendments to the Commission proposal. In response to a question from this author at the beginning of the meeting the Rapporteur made it very clear that, in the absence of definitive guidance from the European Parliament's Secretariat about the effects of the invocation of the Article 250 (2) rights, the parliamentarians were working on the basis that the process had been reset to first reading within the European Parliament by the Commission's action. The subsequent sequence of events, culminating in the adoption by Council of a 'common position' (Council, 2003), demonstrated that the expectation that the process would be re-set to first reading in the European Parliament was incorrect and the European Parliament's next involvement was at second reading. The remainder of the meeting was an excellent model for cooperation between a European Parliamentary Rapporteur and industry representatives.

The continuing search for practical expositions on the EC legislative change process has met with only limited success. Shaw (2000) includes a short section attempting to describe the codecision process and utilises a flow-chart to assist the description. From an EC internal market practitioner's perspective the description is of the high level process only without identifying where and when practitioners can attempt to exert influence. The flow-chart is of limited value in that it uses unexplained, and in some instances misleading, abbreviations. Vincenzi and Fairhurst (2002) similarly provide no more than a top level overview of the codecision, Article 251<sup>105</sup> process and includes no interface data that would be of practical assistance to EC internal market practitioners. Neither Shaw (2000) nor Vincenzi and Fairhurst (2002) made any comment on the possible influence of any Article 250<sup>106</sup> intervention on the codecision process.

### 3.3.2 PROFESSIONAL AND TRADE LITERATURE

In this section, examples of, at best, misleading information from a selection of professional, trade, journals is presented. These particular examples relate to the

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<sup>105</sup> N.7 above

<sup>106</sup> N.7 above

potentially explosive atmospheres (ATEX) directives<sup>107,108</sup>. It is recognised that much of the information offered in professional and trade journals is clearly of a higher quality than the following examples.

Drives and Controls. Thompson, (2002) demonstrates a remarkable lack of understanding of the requirements of the ATEX directives<sup>109</sup> by the statement '*Users are likely to put pressure on suppliers to comply with ATEX and to provide third party certification, as a condition of purchase.*' Under the second, protection of workers, ATEX directive<sup>110</sup> users of equipment are required to undertake a hazardous area classification, based on the likely presence of a potentially explosive atmosphere, and then select appropriate equipment accordingly. Thus the pressure to comply with the ATEX directive is on the user of equipment to select appropriate equipment. Manufacturers are only required to obtain third party certification for those items of their equipment portfolio that are designed for use in areas where high, or very high, levels of protection, as defined in Annex I of the product ATEX directive<sup>111</sup> is necessary.

Plant & Control Engineering. Nascimento (2002) in a feature article attempts to explain important features of the ATEX directives<sup>112</sup> that were then due to come fully into force on 1 July 2003. Within this article (Nascimento, 2002)) there are serious deficiencies and errors. The major deficiency is the failure to identify the second, protection of workers ATEX directive<sup>113</sup> which is where the requirement placed on employers and users for the formal assessment of explosion risk is defined. This author would also suggest that, for a UK rather than European publication, the article is deficient in that it makes no reference to the transposed national regulations<sup>114,115</sup>. The serious error by Nascimento (2002) is his statement '*Instead of a certificate of conformity and the CE mark on electrical equipment, this [manufacturer] declaration*

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<sup>107</sup> N.75 above

<sup>108</sup> Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (15<sup>th</sup> individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ 2000 L 23/57-64

<sup>109</sup> N.75 and N.108 above

<sup>110</sup> N.108

<sup>111</sup> N.75 above

<sup>112</sup> N.75 and N.108 above

<sup>113</sup> N.108 above

<sup>114</sup> The Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 1996, SI 1996/192

<sup>115</sup> The Dangerous Substances and Explosive Atmospheres Regulations 2002, SI 2002/2776



... will be the "passport" for the circulation of goods.' Any general advice that equipment within the remit of the ATEX directives<sup>116</sup> does not require CE marking is, at the very least, questionable advice.

Instrumentation. Francis (2003) begins a short piece with '*From 1 July 2003 a new Ex guideline – ATEX 100a – will exclusively govern...*' whereas the ATEX 100a (now ATEX 95) directive<sup>117</sup> was already EC internal market, and transposed UK national<sup>118</sup>, law. The suggestion that an EC directive is only a set of guidelines rather than law is of great concern since it demonstrates a serious lack of understanding and/or represents questionable journalism.

Each of Drives & Controls, Plant & Control Engineering and Instrumentation are intended to be read by professionals in industry, including EC internal market practitioners, and it is probable that such professionals are more likely to read this class of journal than they are to read academic journals. The mix of correct and incorrect information presented in the journals does not serve EC internal market practitioners well since there is no clear way for the uninformed to differentiate between the good and bad advice on offer.

Two additional examples of misleading information published in trade journals are reported in Section 4.3.2 'Tests of the system'.

### 3.4 UK processes related to EC institution processes

Other than when the UK government is acting in its role as a member of Council, there are two periods when the UK government could be expected to interact with UK stakeholders. The first is the period leading up to the publication of a formal Commission proposal for new legislation. There is anecdotal evidence from professional colleagues across Europe that a number of Member States, including the UK, actively cooperate with the Commission during this period of formulation of legislation. The second period begins on the adoption of an EC internal market

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<sup>116</sup> N.75 and N.108 above

<sup>117</sup> N.75 above

<sup>118</sup> N.114 above

technical legislation directive and continues through the process of transposition into UK national law.

This author's professional experience of EC internal market technical harmonisation directives adopted in the late 1980s, through the 1990s and beyond, confirms that successive UK governments had some dialogue with UK stakeholders in each of the periods identified above. But that experience also suggested that the process employed was an *ad hoc* process rather than a documented process in that it appeared to be different for each directive – even when the processes for two directives were running simultaneously. The publication of the Transposition Guide (Cabinet Office, 2003) should herald a new era wherein each UK government department, and its officials, responsible for a transposition follows this guide.

It is too early to assess the effectiveness of the guide other than to observe that it is quite comprehensive and requires at all appropriate stages consultation with stakeholders – this should include internal market practitioners. It is hoped that assessments of the effectiveness of the guide will be made by the UK government via the Cabinet Office and/or the National Audit Office as well as by other, independent, commentators.

### 3.5 Commentary on the literature

Within this Section the findings from Chapter 2 and Chapter 3 are discussed in relation to some of the questions included in the structured interview, Appendix II. This discussion is a prelude to a full presentation and discussion of the data from the three strands of the fieldwork; structured interviews, tests of the system and participant observation that is presented in Section 5.3

#### 3.5.1 THE LAW MAKING PROCESS

Within this Section the findings in relation to the process, provisions for the use of languages and for the transfer of texts to the Official Journal are discussed.

##### 3.5.1.1 The process

The research reported in Chapter 2 was concerned with establishing both the process that was to be critically reviewed and some major nodes within that process. Appendix I summarises, in chronological order, the development of the infrastructure of the European Community. From the chronological tabulation of Appendix I it can be seen that the nodes of the current infrastructure; the Council, the European Parliament, the Commission and the Economic and Social Committee are identified in the 1957 Treaty of Rome<sup>119</sup> establishing the European Economic Community, albeit what is now the European Parliament was, in 1957, called the Assembly. The roots of the Council, the Commission and the Assembly go back to the 1951 European Coal and Steel Community<sup>120</sup>. Working from the Treaty<sup>121</sup> there is some doubt as to whether the Economic and Social Committee (ESC) was originally an institution of the European Community, for clarification refer to the discussion in Section 2.2.1 For the purposes of this research the ESC is considered to be an institution along with the Council, the European Parliament and the Commission, each playing a part in the European Community internal market technical legislative process.

Tests of the knowledge of the four institutions identified as above were used within the fieldwork Structured Interview, Question B.2, as an objective measure of knowledge of the internal market technical legislative process held by EC internal market practitioners. Inability of respondents to identify any of the EC institutions involved in the process could be taken to indicate poor process knowledge whereas identification of all four EC institutions could be taken to indicate a good knowledge of the process.

The method by which people become members of each of the four institutions actively involved in the internal market technical legislative process was established and is summarised in Table 3.3

The information related to membership of the institutions, as summarised in Table 3.3, was used within the fieldwork Structured Interview, Questions B.3 and B.4, as an additional objective measure of process knowledge held by the respondents.

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<sup>119</sup> N.1 above

<sup>120</sup> Treaty establishing the The European Coal and Steel Community [Treaty of Paris], HMSO, London (this is Cmnd. 4863 that reproduces, in English, the text of the Treaty as originally published in 1951)

<sup>121</sup> N.1 above

**Table 3.3 Indicating how people become members of the institutions actively involved with the internal market technical legislative process.**

<b>Institution</b>	<b>Method by which people become members of the institution</b>
Council	Ministers of the Member States' government appropriate to the subject matter attend.
European Parliament	Directly elected by Member State, and hence European Union, citizens.
Commission	Commissioners are nominated by Member State government and then ratified by European Parliament. Officials are appointed via processes broadly similar to those applicable to UK civil servants.
Economic and Social Committee	Nominated by Member State government and then ratified by Council.

It was expected that somewhere within the primary or secondary legislation there would be a description of the EC internal market technical legislative process. The basic process description is provided in Article 251 of the Consolidated version of the Treaty Establishing the European Community<sup>122</sup> as discussed in Chapter 2. Knowledge, or lack of knowledge, of this description again provided an objective measure of knowledge and was covered by Structured Interview Question B.5. A response indicating knowledge of Article 251, or old Article 189b alone, was taken as sufficient to indicate knowledge of the process description even though it is only through Article 95 (op. cit.) that the Economic and Social Committee (ESC) becomes a mandatory consultee in the process.

Article 95 strongly suggests that within it, and within Article 251, the full description for the internal market technical legislative process will be found. It has been shown, Section 3.3.1, that this is not in fact the case. Article 250 (2), an article that is not referred to in either of Articles 95 or 251, provides the Commission an opportunity, under defined circumstances, to withdraw its original proposal and to submit an alternative proposal. The particular difficulty that arises when the Commission acts under Article 250 (2) entitlement stems from the lack of determinism about where the process re-starts with the Commission's revised proposal. What happened in the case of the draft Measuring Instruments Directive (Commission, 2000b) was that the

<sup>122</sup> N.7 above

Commission used its powers conferred by Article 250 (2) to put forward an alternative proposal (Commission, 2002a) after each of the Economic and Social Committee and European Parliament had submitted their reports. Thereafter the 'common position' document used for the second reading process was constructed from the ESC and European Parliament reports on the original proposal and Council's comments on the revised proposal.

No evidence has been found to directly support any suggestion that the Commission used its Article 250 (2) powers, as and when it did, to deliberately negate the ESC and European Parliament comments. The lack of determinism in Article 250 (2) afforded the Commission this opportunity to avoid addressing comments from the European Parliament in particular. It can of course be argued that the European Parliament has the second reading opportunity to re-establish its comments. The difficulty now arises that the European Parliament voting requirements are much more stringent at second reading and less likely to be met. This situation makes it less likely that the European Parliament can pass resolutions critical of proposals for legislative change at second reading. This author would suggest, therefore, that the use of Article 250 (2) sways, in favour of the Commission, the balance of power that was thought to have been shifted towards the European Parliament by Article 251<sup>123</sup>.

Even where the requirements of the treaty are clear there is evidence, as discussed in Section 2.3.3.3, that Council does not comply with the simple requirement specified in Article 249 (op. cit.) that decisions be addressed to someone – the Treaty (op. cit.) does not appear to allow any discretion in this requirement and action by the Commission could be expected. Hartley (2003) notes '*The true position would seem to be that the Commission has a discretion but is also subject to a duty ... to take the most appropriate action to ensure that Community law is obeyed ...*'. Whatever the merits of Hartley's assertion '*... [for the Commission] to take the most appropriate action to ensure that Community law is obeyed ...*' it is clear that Council have been allowed to create an extended record of failure of compliance with a Treaty (op. cit.) provision. A similar review of Commission decisions showed that the Commission acts properly in addressing their decisions.

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<sup>123</sup> N.7 above

Figure 2.1 shows the interactions between the EC institutions for the preparation of internal market technical legislation as set down in Articles 95 and 251 of the Treaty (op. cit.). This author would suggest that the drafters of the treaties have missed an opportunity to improve clarity and determinism of Articles 95, 250 and 251 by failing to incorporate a flowchart within the treaties. There is nothing in Articles 95, 250 or 251 to suggest that even limited discretion is available to any of the EC institutions to modify the process sequence. The main uncertainty comes from the provisions of Article 250, as discussed earlier. The incorporation of a flowchart within the treaties themselves would appear to have four major benefits: clarity, succinctness of text that would assist consistency of translation, determinism and an improved ability to track progress of any proposal for change through the process.

Even though the process sequence may be considered as defined it is apparent that there are two major uncertainties that may affect internal market practitioners in particular. These major uncertainties are to be found at the front end of the process – the initiating event of Figure 2.1. The first uncertainty relates to the process as defined, it is expected that the Commission would produce a proposal within a reasonable period of time and then for the remainder of the process to be followed. Experience of the draft Measuring Instruments Directive (MID)(Commission, 2000b), for which early consultation drafts (Commission, 1991) were available from the early 1990s, show that this initial stage can take almost a decade.

Information on the early stages of the Electromagnetic Compatibility (EMC) Directive<sup>124</sup> and the Machinery (MC) Directive<sup>125</sup>, each of which is also a New Approach directive, is not available. The new approach to internal market directives only came into existence in 1985<sup>126</sup> and within four years the EMC and MC directives had been through the entire process and had been adopted as internal market legislation. Given such comparative data it is difficult to avoid some conjectures about the efficiency of the internal Commission processes related to the drafting of the Measuring Instruments Directive proposal (Commission, 2000b). The second uncertainty stems from a possible alternative course of action, not provided for in the Article 251<sup>127</sup>

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<sup>124</sup> Council directive of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility (89/336/EEC), OJ 1989 L 139/19-22

<sup>125</sup> Council directive of 14 June 1989 on the approximation of the laws of the Member States relating to machinery (89/392/EEC), OJ 1989 L 183/9-32

<sup>126</sup> N.19 above

<sup>127</sup> N.7 above

process, whereby the Commission decides, during the course of its preparatory work, not to put forward a legislative proposal but instead to abrogate its responsibilities and invoke 'subsidiarity'. This is what happened in the case of Stage II Vapour Recovery as discussed in Section 3.3.1. The sector of industry concerned was thereby subjected to a long period of uncertainty by the Commission and now suffers the lack of technical harmonisation as a result of some, but not all, Member States establishing their own national requirements.

In addition to the above uncertainties there exists the overall uncertainty of time to complete the process even when the process as defined is followed. Such uncertainty may be unsatisfactory but it is not substantially different from what occurs in the Member States in relation to domestic legislation.

Throughout the period of this research extensive use has been made of the EC institutions' websites. Navigation of these websites has not always been easy. Undoubtedly some of these difficulties were caused by the researcher himself, but this was not always the case. Poor website management by the EC institutions has also been a factor, but any attempt here to document all of these perceived difficulties would not serve any useful purpose. Over the period of this research a number of changes to the layout of EC institutions' websites have been observed. Each change has necessitated re-learning the site's navigation. Too frequent forced change may be clouding this author's judgement on quality of the site.

It was found that even though European Community directives have been, and remain, at the very heart of the legislative framework of the internal market there was no requirement to publish the directives until the coming into force of the Treaty of Amsterdam<sup>128</sup> – forty years after the establishment of the European Economic Community and the birth of its common market. Even without treaty requirements primary and secondary legislation has normally been published in the Official Journal.

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<sup>128</sup> N.4 above

### 3.5.1.2 Language

The management of language within the Commission, and to a lesser extent the other institutions, undoubtedly presents a major challenge. At the time of writing, April 2004, with the EU of fifteen Member States having eleven official languages and working languages, the Commission (2000c) employs directly and as freelance contractors about 1200 translators who, together with managers, secretaries etc make up about 8% of the total Commission staff. Bainbridge (1998), however, suggests that approximately one third of Commission staff are engaged on interpretation and translation services. The Commission (2000c) indicates that it is currently assisting the applicant countries with the translation of the *aquis communautaire* and in the setting up of a system for training translators for the future. It is not yet clear how the EC institutions will manage the conduct of business with twenty official languages and working languages following the 2004 enlargement and what the cost will be to the citizens of the EU.

From a process perspective what is already clear, from knowledge of delays in holding Council Working Group meetings to discuss the draft Measuring Instruments Directive (Commission, 2000b), is that progress can be inhibited by Member States demanding full translation facilities. These demands are not just petulant responses to situations but appear to be the right of Member States. When resources are limited work has to be prioritised and as a result some work has to be delayed. Circumstances such as those noted above were quoted by UK Council Working Group members as a reason for delays to the progress of the draft Measuring Instruments Directive (op. cit.). With nine additional official languages and working languages following the enlargement in 2004 then this situation is more likely to deteriorate rather than it is to improve<sup>129</sup>.

Section 2.2.4 discusses in detail a number of aspects of the overall European Community language issues. Within this discussion the CEN model (CEN, 1996, Vol.2) for working with an equivalent diversity of language was identified. In the absence of any formalised approach to more efficiently managing the diversity of language some evidence of pragmatism in managing the situation was identified. An important finding was the failure by each of the institutions that are part of the EC

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<sup>129</sup> Dombey (2004) notes that a set of legislation for the financial services sector failed to meet the 30 April 2004 translation deadline, as a result it now has to be translated into all of the current, May 2004, set of official languages and working languages and is now not expected to be ready until September 2004.



internal market technical legislative process to abide by the requirements of the Manual of Precedents (Council, 2001a).

### 3.5.1.3 The Official Journal

The role of the Official Journal is essentially a passive role, that of publication of certain legislative acts and some other documents. For some classes of legislation, those for which the date of 'coming into force' is determined by the date on which the legislation is published in the Official Journal, the Official Journal can to a limited extent affect the date of the 'coming into force' of legislation. For the technical legislation of the internal market the legislative vehicle is that of directives for which the date of 'coming into force' is set within the directive not by its Official Journal publication date.

The handling of the draft Measuring Instruments Directive (MID) following the adoption by Council, on 26 February 2004, of the European Parliament's second reading amendments has provided a useful insight into what was previously understood to be a simple, straight through, activity. The statement suggests that either the text that was voted on by Council was not available in all official languages and working languages or that linguists were modifying a text after it was finally adopted. Neither of the above possibilities enhances confidence in the Article 251<sup>130</sup> process. Subsequent careful comparison of the European Parliament approval of 'common position with amendments' (European Parliament, 2003), accepted by both Council and the Commission, and the final text of the MID<sup>131</sup> reveals that Amendment 28 (European Parliament, 2003) has not been included as expected. It remains at present unclear if this omission is related to the protracted work of the linguists or to some other activity. That a final legislative text differs from the sum of common position and agreed amendments suggests a lack of transparency in part of the process. There is no evidence to implicate the Official Journal in this discrepancy.

The change of name from 'Official Journal of the European Communities' to 'Official Journal of the European Union', introduced by the Treaty of Nice<sup>132</sup> is acknowledged

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<sup>130</sup> N.7 above

<sup>131</sup> N.28 above

<sup>132</sup> N.5 above

but is not seen as having any material effect on the European Community internal market technical legislative process.

### 3.5.2 EUROPEAN COMMUNITY INSTITUTIONAL AND NON-INSTITUTIONAL LITERATURE

One measure available for the assessment of a process is the quality of the process output. In the context of this research a measure of the EC internal market technical legislative process is the extent to which the internal market has become functional. In attempting to make such an assessment it was found that even the basic construct of the internal market was referred to in three different ways. The lack of consistency in terminology provides the basis for some concern as to consistency of objectives. It is not entirely clear if the common market, the single market and the internal market are really the same thing. This concern is highlighted by the use of the terms common market and internal market in such high level documents as the Treaty<sup>133</sup>. On the basis that common market and internal market are one and the same, then a preliminary measure of success in creating a functional common, or internal, market is available from the treaties and EC institutional pronouncements. The Treaty of Rome<sup>134</sup> required the common market to be progressively established within twelve years, i.e. by 1970. In 1985 the Commission (1985) and Council<sup>135</sup> each agreed targets to complete the internal market by 31 December 1992. Article 13 of the Single European Act<sup>136</sup> introduced a new Article 8a into the Treaty of Rome<sup>137</sup> thereby even more formally establishing the 31 December 1992 deadline. It is suggested these activities can be accepted as an admission that the initial 1970 target had not been achieved. The Measuring Instruments Directive<sup>138</sup>, an internal market directive covering products not previously legislated within the EC, allows the Member States until April 2006 for transposition, suggesting that on this evidence alone, the internal market cannot be seen as complete, at least until April 2006. Overall the above suggests that the EC internal market technical legislative process has not yet delivered a completed internal market. If the process output, after forty-five years of trying, remains unsatisfactory then it seems reasonable to infer that the process has some deficiencies.

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<sup>133</sup> N.7 above

<sup>134</sup> N.1 above

<sup>135</sup> N.19 above

<sup>136</sup> N.2 above

<sup>137</sup> N.1 above

<sup>138</sup> N.28 above



Formal references, such as those made in the treaties, and also some of the less formal references, to the Commission make no reference to the Commission's internal organisational structure. It has not been the purpose of this research to delve deeply into the internal organisational structure of the Commission. It is pertinent to note that there are a number of essentially autonomous Directorates General each of which is responsible to an individual Commissioner and at the top level of the hierarchy the Commission operates in a collegiate manner. Within the structure as outlined there exists the 'Enterprise' Directorate General where the new approach technical harmonization directives are drafted and the 'Internal Market' Directorate General. These two Directorates General are responsible to two different Commissioners, thus there is no one person with overall responsibility for the internal market. There is some concern therefore that the internal organisational structure of the Commission may be part of the problem in the delivery of a completed internal market. It is in areas such as this that the paucity of academic literature relating to process, as opposed to the wealth of case law literature, becomes evident. No critique of the internal organisation of the Commission has been found that assesses the effect of organisational structure within the Commission on the delivery of internal market legislative proposals.

With little more than a superficial look at the pen portraits of authors whose academic works are to be found on the shelves of law libraries, e.g. Middlesex University and University of Essex, it is clear that these authors are legal academics possibly more concerned with the output from the technical legislative process rather than the practical details of the process itself. At first sight, when searching for help with the EC internal market technical legislative process works such as 'Practitioners' Handbook of EC Law' (Barling and Brealey, 1998) seem to be of value. On closer inspection, it becomes clear that in this instance 'practitioner' is referring to members of the legal profession and the work relates to the finer points of law, not really of value to an internal market practitioner's search for process information. Similar comments apply to a Chapter entitled '*Better lawmaking? An evaluation of lawmaking in the European Community*' by Bunn in Craig and Harlow (1998) where there is neither description nor critique of the process.

It would be easy for this author, as an internal market practitioner, to simply criticise the lack of literature available to assist his professional work. A more constructive approach would be to suggest to the Confederation of British Industry and the Institute

of Directors, acting in umbrella roles not unlike that of the Bar Council, to produce and publish some form of handbook to assist their members to make inputs to the EC internal market technical legislative process at the appropriate times.

Council (2000), in its annual report to the European Parliament, admits that the internal market is incomplete and needs '*rapid work*'. The Commission (2001b) paper 'Working together to maintain momentum', discussed in Section 3.2.1 takes as its starting point the premise that the internal market is complete. Such a premise needs to be judged by the Commission's (2003) own Internal Market Scoreboard that reports a non-zero, and rising, transposition deficit and a transposition deficit target that is not even zero. Despite these failures by the current EC Member States, all of whom became members on or before 1 January 1995, there is an expectation (Commission, 2001a) that each of the applicant states shall have all internal market legislation in place at the time of their accession in May 2004. The admission in Internal Market Scoreboard Number 12 (Commission, 2003) that late transposition '*...leaves a void in the regulatory framework.*' provides hope, though perhaps no great expectation, that the European Community may take actions that adequately address the problem.

For this author, an internal market practitioner, real difficulties arise from attempts to reconcile personal experiences with any of the reports issued by the EC institutions. The Commission would want us to believe that the target for a completed internal market by 31 December 1992 was achieved. The Commission (Commission, 2002b, 2003, 2004) admits that there is a transposition deficit. A deficit that appears to suggest that the un-transposed directives do not have any adverse effect on the completeness of the internal market. If this is the case then the perceived need for these yet to be transposed directives is unclear. Council, meanwhile, are prepared to admit continuing problems with completeness but do not appear to demand effective corrective action to be taken by the European Community's executive – the Commission. Council when dealing with requests for action by the Commission does not use robust language. A good example is provided in a Council Resolution<sup>139</sup> which 'CALLS UPON the Commission to report ...' where the need would appear to be for demands to be made of the Commission followed by a real holding to account.

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<sup>139</sup> N.38 above

Unlike the other EC institutions, Council appears not to take any investigative actions of its own. When Council perceives a need for investigations, then Article 208 of the Treaty<sup>140</sup> provides for these investigations to be carried out by the Commission. The independence and thoroughness of any investigation by the Commission, that may involve actions, or lack of actions, by the Commission, remains questionable and it seems unlikely that there is any real holding to account of individuals or departments within the Commission.

The earlier discussion shows that Council, when it determines that investigations into areas such as progress on completing the internal market would be of benefit, relies on the Commission to investigate. The Commission, acting here as the executive branch of the EC, is less likely to be rigorous and critical in any investigation than a truly independent investigator. The independence of major enquiries in the United Kingdom is often assured by the appointment of a senior member of the judiciary to head up the enquiry. The European Parliament, in contrast, has shown the value of greater independence in investigation than is provided by the Commission and has prepared reports on the state of the internal market (European Parliament, 1997, 1998) that are somewhat at variance with the views promulgated by the Commission. As was shown also to be the case with Council, there is little effective control of the Commission by the European Parliament to ensure that even the European Parliament's comments and criticisms are adequately addressed. Even the powers open to the European Parliament to set up a temporary 'Committee of Inquiry', as allowed for in Article 193<sup>141</sup>, only extend to inquiry into '*... alleged contraventions or maladministration in the implementation of Community law ...*'. Failure of the Commission to act on reports from the European Parliament would not appear to fall within this scope.

Craig & de Burca (1998) indicate that the amendments by the Treaty on European Union<sup>142</sup> and the Treaty of Amsterdam<sup>143</sup> to what is now Article 251 of the Consolidated Version of the Treaty Establishing the European Community<sup>144</sup> have had the effect of '*... further consolidating the role of the [European] Parliament in the decision-making process...*'. This author would not contradict the Craig & de Burca view, but would argue that it is a somewhat simplistic view that fails to adequately

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<sup>140</sup> N.7 above

<sup>141</sup> N.7 above

<sup>142</sup> N.3 above

<sup>143</sup> N.4 above

<sup>144</sup> N.7 above

recognise the significance of the changed conditions imposed upon the European Parliament as part of this process change. Prior to common position the European Parliament submits its report to Council on the basis of a simple majority in plenary session. There is no binding obligation on Council to accept any proposed amendments from the European Parliament in formulating common position. On receipt of common position the European Parliament can now only reject the proposal by an absolute majority of its component members at a vote that must be taken within three months. Not only is such an outcome more difficult to achieve than the earlier simple majority but the difficulty can be exacerbated by the manipulation of the timing of the submission of common position to the European Parliament. From a process perspective there may be an apparent consolidation of the role of the European Parliament in the decision making. At the practical level possible influence of the process by internal market practitioners has probably not improved. In practice the 'power of the pen' that rests with the Commission in the initial drafting of legislation and Council's control over common position appears to still leave the European Parliament some way behind in the inter institutional power struggle. As in many endeavours, the greatest influence looks likely to be achieved at the front end of the process, here this would mean engaging with the Commission as it prepares its draft legislation. For small sectors of industry, where there may not be adequate resources for permanent monitoring and lobbying of Commission activities, their sporadic interaction with the Commission may not be sufficient for them to be aware that proposals that may affect them are being prepared. The views from their sector of industry may not be adequately heard early enough in the overall process.

Other commentators, for instance Dashwood (1994), Earnshaw and Judge (1995) and Usher (1998), offer the comment that there are potential EC internal market technical legislative process problems caused by lack of clarity in the text of the treaties. These commentators offer limited suggestions for change to improve clarity in the text and hence improve the process itself.

The influence that European Community and Member State national legislation can have on the internal market, almost by accident through, for example, social legislation, seems not to be fully understood. An example of European Community social legislation that creates a distortion of the internal market is the explosive atmospheres

protection of workers directive<sup>145</sup>. A similar, national, distortion is created by the application of the Disability Discrimination Act<sup>146</sup>. In each of the above cases the social laws are capable of introducing technical barriers to trade that can become measures having equivalent effect to quantitative restrictions between Member States thus distorting the internal market. Such measures are contrary to the requirements of Article 28 of the Treaty<sup>147</sup>. Dannenbring (1999) clearly identifies the negative influences on the internal market, without specifying whether these are accidental or deliberate, as a result of actions by the Member States.

A limited ability to track progress of a proposed legislative change is provided via the Pre-Lex database accessible through the [www.europa.eu.int](http://www.europa.eu.int) website. From Pre-Lex it is evident that proposals for legislative change from any given Directorate General of the Commission may be issued to other selected Directorates General. There is no evidence that recipient Directorates General, for example DG Enterprise and DG Internal Market, recognise and/or respond to threats to the internal market from other Directorates General.

There exists a directive<sup>148</sup> establishing a process designed to prevent Member States from introducing national technical legislation that would adversely affect the internal market. This process is a notification system driven by the Member State intending to introduce new technical legislation. The overall efficiency of this process has not been fully researched, but this author is aware of a recent change to the technical requirements for Stage II vapour recovery systems in Germany that did not reach the UK notification point, suggesting deficiencies in the process. In addition to the above example the notification system does not appear to be designed to catch the changes to social, and other, legislation that can affect the internal market.

Council and the European Parliament have the power, via the Article 251<sup>149</sup> process, to adopt or reject proposals for internal market technical legislation from the Commission. Once adopted it is for the Commission, through powers conferred via Articles 211 and 226 (op. cit.), to enforce the legislation. In the context of directives, that part of the enforcement regime controlled by the Commission is transposition. This includes total

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<sup>145</sup> N.108 above

<sup>146</sup> N.74 above

<sup>147</sup> N.7 above

<sup>148</sup> N.22 above

<sup>149</sup> N.7 above



failure to transpose as well as inaccurate, or inappropriate, transposition. The process perspective here has to be that the process, the transposition of Community legislation into Member State national legislation, all too often fails. While the Commission clearly has the task of enforcement the guilty parties are the individual Member States in their failures to uphold requirements agreed to in Article 10 (op. cit.). For ease of reference Article 10 is reproduced below:

#### *Article 10*

*Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks.*

*They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.*

The Commission (2002b) admits to registering approximately 2000 new infringements of Community legislation per annum. Exactly how many of these infringements are related to the internal market for goods is not clear, but it does indicate a lack of respect for Community legislation, by the Member States rather than by the general citizenry. In its report on the activities of the European Ombudsman the European Parliament (European Parliament, 2002) is highly critical of the Commission's policy of withholding the entire infringement procedure from public scrutiny.

In an attempt to understand and overcome some of the transposition problems the Commission (2002b) puts forward the view that '*...[Member States have] domestic administrative problems and in particular problems of understanding often complex Community legislative texts.*' The Commission (op. cit.) goes on to suggest '*...the drafting by the services of the Commission, in certain specific cases, of guidelines for transposal, which would be recommended to the national authorities.*' Given that transposition is only required for legislative texts agreed by Council the first of the above Commission quotes could suggest that Council agrees to things it fails to understand. An accredited ISO 9001 (ISO, 2000) quality management system embracing Council would require, via Clause 6.2.1, '*Personnel performing work affecting product quality shall be competent on the basis of appropriate education, training, skills and experience.*' With such a quality management system in place there should be a better match between level of complexity of the legislative texts and the

abilities of those agreeing to it, such that transposition should no longer be a problem. The second quote from the Commission appears to be now offering an intermediate process step whereby the Commission intervenes to prepare guidelines for transposition – undoubtedly at added cost and time to the process. It is possible that a similar result would be achieved, more quickly and with more certainty, by the European Community agreeing a regulation rather than a directive – a procedure that circumvents the need for transposition.

It was reasoned in Section 3.2.1 that the official view of the internal market should be that view promulgated by the Commission. Similarly for the Economic and Social Committee (ESC) it was reasoned, Section 3.2.2.3, that their view was the most independent of the views expressed by the EC institutions involved with the internal market technical legislative process. The role of the ESC is purely advisory, even at the stage where the ESC is formally part of the internal market technical legislative process. The potential usefulness of their inputs is diminished compared to those EC institutions with an executive role. Even though other EC institutions are not obliged to act on their reports the ESC prepares and publishes, on its own initiative, reasoned reports (ESC, 1998b) on the internal market. Within this report (*op. cit.*), which is the ESC response to a Commission initiative (Commission, 1997) there is the direct suggestion, in certain circumstances, to use regulations instead of directives. This suggestion had previously been advanced by the Molitor (1995) group of independent experts. It is pertinent to note here that via the re-vamped ESC website it has not been possible to find recent reports from the ‘Single Market Observatory’ of the ESC. Additionally emails to the ESC via their website remain unanswered after several months – contrary to the requirements of their adopted Code of Good Administrative Behaviour.

The Molitor Group report (1995) and the ESC report (1998) are each directed at the Commission and contain positive suggestions for improving the internal market and the system that generates its legislative framework. It is not possible for this author to state that the suggestions within these reports have been totally ignored by the Commission but, similarly, it has not been possible to identify any communication from the Commission that fully addresses each of the suggestions put forward. It is perhaps not reasonable to suggest that the Commission should respond fully and publicly to such reports. What undoubtedly is missing in 2004, more than ten years after the supposed

completion of the re-launched internal market, is a believable action plan that will finally deliver the promise of an internal market.

One of the criticisms raised within this research has been that some of the reviews of the internal market have started from what this author would suggest is the false premise that the internal market is complete. Mathijssen (1995, 1999) in the sixth and seventh editions of his book makes two quite contradictory statements about the state of the internal market:

Mathijssen, 1995: *'It can be said without too much exaggeration, that the freedom to move goods throughout the Community has become a reality, but that vigilance is required from all the economic operators.'*

Mathijssen, 1999: *'What explains that seven years after the completion of the internal market on December 31, 1992, people still experience difficulties when moving goods within the Community?'*

In an ever changing world it should not be expected that opinions are the same in 1999 as compared to opinions expressed in 1995. What is of concern here is that the more pessimistic view is the more recently expressed view. These different views, expressed by a former Director General of the Commission, together with the statement (Mathijssen, 1999): *'There are other areas where the principle of "mutual recognition" cannot work, mainly on account of the complexity of the required regulations.'* suggests that much of the current success of the EC internal market is the result of the pragmatism of EC internal market practitioners rather than purely a measure of the intended beneficial effect of the outputs from the EC internal market legislative process.

One difficulty with dealing with any problem that approaches the complexity of achieving an EC internal market is that of measurement of the level of achievement towards the objective. Even the Commission from its privileged position appears to be unable to make a justified assessment of the state of the internal market. In its Internal Market Scoreboards the Commission (2001a,c, 2003, 2004) starts from the premise of a completed internal market yet discusses serious transposition deficits and continues to propose additional new approach directives extending the areas legislated. Additional legislation to improve the functioning of what is perceived as an already completed

internal market is of course acceptable and to be expected. Any claim that the internal market is complete and concurrently work on legislation to embrace additional trade sectors may be seen as undermining the claim of completeness.

The Commission has made an attempt at measurement of the achievements of the internal market and for the period 1992-2002 an internal market index has been calculated and is published in Internal Market Scoreboard Number 11 (Commission, 2002b). The index has been calculated using variables specified by the Member States. It is presented as a graph showing a rising index. There is little doubt that the internal market has some notable achievements but that does not necessarily mean that the objective of a fully functioning, barrier-free, internal market has been achieved.

The quality of information relating to European Community internal market legislation as reported in Section 3.3.2, and discussed further in Section 5.2.4, made available within the professional, trade, press gives cause for concern. Trade journals, such as those reported on, are industry sector specific, and include within their *raison d'être* the task to inform their readers of developments in their particular industry sector including changes to the environment within which the industry sector operates. When change to the operating environment is legislative there is an obligation for the information disseminated to be accurate. Acceptance, without independent corroboration, by European Community internal market practitioners of the information put before them in trade journals can provide a false description of the environment within which they are expected to operate. Such false descriptions can lead to inadvertent transgressions of the law and/or delays in meeting market needs if, and when, the accurate description of their operating environment emerges.

### 3.6 Summary

Within this Chapter the custodian of the official view of the internal market has been identified – the Commission. It was established that the internal market was due to be completed by 1 Jan 1993 and questions were raised about whether this target can have been convincingly met given the acknowledged transposition deficit.

Problems associated with the organisation of the Commission emanating from the involvement of two Directorates General, Enterprise and Internal market, each responsible to different Commissioners were discussed. Related to this organisation problem were the descriptions of accidental distortions of the internal market framework created by social and environmental legislation.

Comments of the other EC institutions were reviewed and assessments of the effectiveness of these comments were made. Of particular interest was the comment from the Economic and Social Committee about the possibility of using regulations rather than directives to create a more effective framework for the internal market.

A review of independent commentators' publications was included although very little literature on the EC internal market technical legislative process, and its accessibility to internal market practitioners, has been found. Within this *corpus* of literature a number of comments on undue complexity and lack of clarity in both primary and secondary legislation were noted. Few direct suggestions for improvements were found. Serious deficiencies in information disseminated by the trade press were identified.

More detailed findings from the work of this Chapter are presented in Chapter 5 where they are combined with findings from the fieldwork.

## Chapter 4 Methodology

### 4.1 Introduction

Chapter 2 'The law making process' and Chapter 3 'Literature survey and review' together have provided a description of the EC internal market technical legislative process, these Chapters have provided data dealing with supporting activities a & b and parts of supporting activities c & e as described in Section 1.3.2

This Chapter discusses the options available, and the final choice made, for the methodology for the fieldwork to provide data associated with the remainder of supporting activities c, e and supporting activities f & g described in Section 1.3.2, dealing with knowledge and perceptions held by EC internal market practitioners.

This Chapter also records tests made of the EC internal market technical legislative process, supporting activity d (Section 1.3.2). The tests within supporting activity d were not, indeed could not be, performed to a previously identified plan, they were reactions to opportunities that arose during the course of the overall research work.

Data relating to the above activities was obtained through the cooperation, gratefully acknowledged, of individuals who gave time to this research. The analysis of the data obtained is provided in Chapter 5.

### 4.2 Methodology rationale

In this Section the methodological approach adopted to fulfil the aim of this research, Section 1.3.1, is discussed and described. From the aim, concerned with the European Community internal market, it is clear that this research relates to the real social world. The improved understanding of the EC internal market, and of its technical legislative processes, that derive from this research has academic value in addition to practical value to individuals and to organisations.

Scott (1998) draws a distinction between basic research and applied research through two comments '*...basic research, is driven more by theory...*' and '*...applied research is driven by an interest in solving some identified problem*'. Bryman (2000) similarly suggests that research that '*provides knowledge that can be used by organisations*' is applied research. Cooper & Emory (1995) clearly support Bryman's view by their statement '*Applied research has a practical problem solving emphasis. It is conducted to reveal answers to specific questions related to action, performance or policy needs.*' A review of the aim and supporting objectives (Section 1.3.1) of this research in the context of the above general descriptions of research suggests that this research be treated as 'applied research'.

Much organisational research (Bryman, 2000) is concerned with an internal study of an organisation with, initially at least, the results of the study being used to improve the performance of that organisation. In this context Allen's (1991) definition of organisation: '*an organised body, especially a business, government department, charity etc*' suggests that any organisation being studied is clearly bounded. For organisations falling within Allen's definition it would seem reasonable to expect that there would exist a systematic, orderly, internal structure with what might best be described as an individual, or possibly a small group of individuals, providing leadership from the top of the structure. It is clear that this research does not fit the general pattern of being an internal investigation, nor is it restricted to a single organisation. Chapter 2 identified that there are a number of organisations, known within the overall European Union structure as institutions, which interact to produce European Community internal market legislation. The inter-institutional interactions take place within a framework established by the Consolidated Version of the Treaty Establishing the European Community<sup>1</sup>, but there is no one individual, or group of individuals, charged with overseeing the interactions. Also, since no single EC institution, acting alone, can generate and implement EC internal market legislation this research has had to investigate the operation of a somewhat amorphous sub-set of the set of European Union institutions. Since the research is neither internal, nor commissioned by any one or more of the EC institutions, the most that can be achieved from the problem solving perspective is the provision of information to better understand the EC internal market technical legislative process. The additional information has value to assist external practitioners as they undertake their normal

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<sup>1</sup> Consolidated Version of the Treaty Establishing the European Community, OJ 2002 C 325/33-184

work and to identify weaknesses of, and suggest improvements for, the operation of the sub-set of institutions. It is not possible, as part of this research, to solve any EC institutional problems in a way that would meet Cooper and Emory's (1995) description of applied research. However, Bryman's (2000) requirement of applied research, to provide knowledge that can be used by organisations, is achievable.

Having thus described the context of this research it is now possible to discuss and describe in more detail the methodological approach.

Associated with the domain of applied research, within the broader context of social research, there are two distinct models of the research process. Robson (1999) describes these two models as follows: '*One is labelled as positivistic, natural science based, hypothetico-deductive, quantitative or even simply "scientific"; the other as interpretive, ethnographic or qualitative – among several other labels.*' While there is considerable agreement with Robson's view that there are two distinct models of the social research process (Gill and Johnson, 1991)(Audi, 1999)(May, 2001) the choice of terminology to describe the dichotomy shows some variation. Irrespective of the terminology employed the two models are broadly understood as:

- a) requiring some form of hypothesis as the starting point, the hypothesis is then tested and based on the outcome of the test the hypothesis is either upheld or rejected, if rejected the original hypothesis may be modified and subjected to further test(s), or
- b) requiring a detailed study of a particular situation to provide observational data from which a descriptive theory can be produced.

The sequence 'a' above is widely recognised as the *deductive* process (Audi, 1999) (Cooper and Emory, 1995) (Gallear, 1999) (Gill and Johnson, 1991) whereas the sequence 'b' above is similarly widely recognised as the *inductive* process (Audi, 1999) (Cooper and Emory, 1995) (Gallear, 1999) (Gill and Johnson, 1991). Cooper and Emory (1995) further recognise that in any given research the inductive and deductive processes may be used in a sequential manner.

Attempts to describe any implicit rules that are applied to the EC internal market technical legislative process, an ethnographic approach to the research, would require



the researcher to have significant, indeed almost open ended, access to those working within the EC institutions. Clearly such an approach for this research was not a practical option.

For an historically relatively modern system of governance such as that employed by the European Union it would be of some concern to be forced to consider that the rules governing the EC internal market technical legislative process grew 'organically' from the bottom up to create a system rather than there being a top down, imposed, system. The part of this research concerned with the identification of the EU institutions and of their operational rules is reported in Chapter 2 'The law making process'; within this a system for the generation of EC internal market technical legislation has been identified, albeit a system with limitations and flaws as discussed in Chapter 3 and Chapter 5.

The first steps in this research were to identify those European Union institutions involved in the generation of EC internal market technical legislation and to describe their internal processes. The identification and description was achieved through qualitative, archival, research (Bryman, 2000) (Robson, 1999), these findings are reported in Chapters 2 and 3. In so far as the description thus obtained allows for the prediction of what should happen to proposals for new internal market legislation then it could be argued that an inductively produced theory of the EC internal market legislative process has been generated. However, in this instance it is perhaps more appropriate to suggest that what has been achieved is the documentation of a 'model' of the EC internal market technical legislative process rather than a theory. Cooper and Emory (1995) define 'model' as a *'representation of a system that is constructed to study some aspect of that system or the system as a whole'*. For the fulfilment of Objective 1, Section 1.3.1, of this applied research the author would assert that a descriptive representation, model, of the EC internal market technical legislative process is of greater value to practitioners than a theory that attempts to explain the workings of the process.

This second, fieldwork, part of the research addresses Objectives 2 and 3, Section 1.3.1. This is achieved for Objective 2 by assessing, through supporting activity f of Section 1.3.2, the knowledge, understanding and perceptions held by internal market practitioners of the EC internal market and its associated legislative change processes that were identified by Activities a, b and c. Similarly Objective 3 is fulfilled by

supporting activity g of Section 1.3.2 This research, therefore, constitutes a cross-sectional study (Cooper and Emory, 1995) and reflects the situation as a 'snapshot in time'. A longitudinal study, concerned as it is with *'the assessment of change or development of some issue or situation with time'* (Robson, 1999), or a study *'repeated over an extended period'* is not appropriate to this particular research project. For this research only an initial assessment of knowledge and perceptions was required. It was expected that, based on the results obtained from this initial assessment, recommendations would be made aimed at producing improvements in both knowledge and perceptions held by EC internal market practitioners. Some form of longitudinal study to assess any change in knowledge and perception could then be employed to determine if the recommendations, if applied, had been of value.

No substantive data was available to suggest prior knowledge of the outcome of any assessment of knowledge and understanding of the EC internal market technical legislative process held by internal market practitioners. Activity f, Section 1.3.2, was, therefore, conducted as an open enquiry without any reliance on previously used data gathering instruments. As the findings reported in Chapter 2 became clear, a 'scientific' method of assessment presented itself. In order for an EC internal market practitioner to legitimately claim a sound knowledge of the EC internal market technical legislative process it would seem reasonable to expect that the practitioner would be able to identify each of the four EC institutions involved. Thus what originally appeared to be a qualitative question could now be reconstructed as a quantitative measure of knowledge.

The second part of Activity f, Section 1.3.2, is concerned with an assessment of perceptions of how well the internal market works. As essentially no prior information was available it was decided that as broad a sample as possible should be utilised for this initial investigation. Within the limited resources available for this research this decision lead to the rejection of an ethnographic approach, involving a very limited number of case studies, in favour of a broader based attitude survey. The operationalisation of the attitude survey was achieved via Likert scales (Cooper and Emory, 1985) and is more fully described in Section 4.3.1

#### 4.2.1 FIELDWORK OR SECONDARY DATA?

From the very early stages of this research, searches and enquiries have been made in an attempt to uncover existing information on how, and how well, the EC internal market technical legislative process operates. No published literature, or other evidence, has been found that specifically evaluates the overall EC internal market technical legislative process. Similarly no published literature, or other evidence, has been found that assesses how much internal market practitioners know about the EC internal market technical legislative process. What has been found in the literature, fully reported in Section 3.2, is a partial assessment of the top level process (Dashwood, 1994)(Earnshaw and Judge, 1995) and an evaluation of the effects of the process output (Commission, 2001a,c). Within the literature reported in Section 3.2 criticisms are evident that targets for the adoption of EC internal market legislation, for all sectors of the internal market, were not being met (Commission, 1997). However, within this literature there is no explicit suggestion that the EC internal market technical legislative process itself was at fault for these failures to meet targets.

The gaps in the literature, as outlined above, lead directly to the need for this research to be carried out on the basis of independent fieldwork rather than being able to rely on secondary data.

#### 4.2.2 FIELDWORK - WHAT APPROACHES WERE CONSIDERED AND ADOPTED?

In the assessment of approaches to fieldwork it was considered essential that whatever approach or approaches were finally selected one or more of the approaches allowed for making direct contact with a selected group of internal market practitioners to assess their knowledge and perception of the EC internal market technical legislative process and of the functioning of the EC internal market. Without direct contact there remains doubt (Bryman, 2000) about who may have submitted the responses. In the sub-sections that follow a number of possible specific data collection methods are assessed for their relevance to this work and the final decision on the data collection method employed is identified.

#### 4.2.2.1 Focus groups

The creation of focus groups was considered as a possibility but was dismissed.

May (2001) and Robson (1999) each refer to the use of focus groups as an established data collection technique. The examples provided by both May and Robson each relate to situations where the members of the focus group all possess a characteristic that causes them to be in one geographic location, thus making it relatively easy to assemble the group at low cost. However, for this research those individuals considered relevant for inclusion in a focus group were geographically widely dispersed. It was considered highly unlikely by the researcher that these people would consent to the investment of possibly a day of their time for such an exercise and any such exercise that did take place would be likely to involve the researcher in significant re-imbursement of costs, no funds were available for any such re-imbursement.

Powney and Watts (1987) identify a particular difficulty of the mechanics of data recording in a group situation, in particular the difficulty of association of particular comments with specific individuals. May (2001) reports differing results obtained from groups as opposed to individuals suggesting a convergence of view as a result of discussion. May's comment, therefore suggests that group answers to questions which relate to the correct identification of those EU institutions involved in the internal market technical change process may lead to answers different from those that would have been achieved by any individual respondent. The current research is concerned with the assessment of individual knowledge rather than the achievement of consensus views generated by group activities.

Focus groups were not, therefore considered further in the methods of data collection for this research.

#### 4.2.2.2 Action Research

Easterby-Smith et al (Easterby-Smith, 1991) identify two beliefs as being central to action research:

- *a belief that the best way of learning about an organisation or social system is through attempting to change it, and this therefore should to some extent be the objective of the action researcher*
- *the belief that those people likely to be affected by, or involved in implementing these changes should as far as possible become involved in the research process itself.*

Given that a number of the individuals targeted for inclusion in the fieldwork of this research were involved, on behalf of a Member State government, in the negotiation and subsequent national implementation of internal market directives, then it may be argued that this research meets the intent of the second of the above beliefs.

However, for the first of the above beliefs there is a need to consider if, in this current research, the author is in fact attempting to change the system for generating EC internal market technical legislation. This research is concerned with the identification of the EC internal market technical legislative process, identification of process shortcomings, assessment of knowledge and understanding of the process held by internal market practitioners and to make some recommendations to correct any deficiencies found. It was not the purpose within this research to attempt to actually modify the EC internal market technical legislative process. As a result of the above this research does not satisfy the first of Easterby-Smith's beliefs and action research within this work was considered inappropriate.

#### 4.2.2.3 Participant observation

This research has been pursued concurrently, as a part time project, with the author's normal professional work. This normal professional work is carried out with, and on behalf of, individual companies and trade associations. This normal professional work provides an updating and explanatory service in relation to changes to the EC internal market technical legislative framework. In performing this work it is necessary to interact with other individuals, many of whom have an interest in the operation of the EC internal market and some of whom have specific knowledge of EC new approach technical harmonization directives. These individuals have varied interests in, and perspectives on, the EC internal market, including perspectives from manufacturing, enforcement and regulation.

Robson (1999) suggests that: *'A key feature of participant observation is that the observer seeks to become some kind of member of the observed group.'* In the context of this research the author was indeed a member of several groups that were relevant to the research, however membership of those groups had been established for normal professional reasons prior to the research. As a result of the professional membership of the groups the author met Robson's (1999) definition of complete participant: *'The complete participant role involves the observer concealing that she [he] is an observer, acting as naturally as possible and seeking to become a full member of the group.'*

Bryman's (2000) and May's (2001) descriptions of participant observation are in broad agreement with those of Robson and each of these three authors suggests that the participant observer's involvement takes place over an extended period of time – measured in weeks or months. Involvement such as this would allow for an ethnographic analysis of the group. May (2001) suggests that *'participant observation is the most personally demanding and analytically difficult method of social research to undertake'*. There is no suggestion, within this research, of any attempt to use participant observation as a means to describe or understand the behaviour of those groups of which this author was a member. Participant observation within this research, as a 'complete participant', made it possible to make observations of the level of knowledge and understanding of matters related to the EC internal market and its associated processes exhibited by other group members, observations that would not otherwise be possible.

The author's normal professional work facilitates access to Member State (UK) directive negotiators and other personnel working on behalf of UK and European trade associations, and other organisations. Each of these individuals is likely to have an interest in attempting to influence the outcome of the EC internal market technical legislative process. Some of these individuals have been heard to express criticism of the process, but in general their work within the legislative change process is to try to modify the outcome of the process rather than attempting to change the process itself. Any attempt by any of these individuals to change the process of legislative change would be, at best, a long-term aim. For most individuals caught up in the process, pressure on their time is likely to preclude anything other than the short-term objective to mitigate unfavourable outcomes of the process. Mitigation objectives, to prevent unfavourable outcomes of the process, are likely to be better served by an improved

understanding and use of the process that is currently functioning rather than expending effort in attempting to modify the process.

No published literature has been found that assesses how well informed are the participants in the EC internal market technical legislative process from Member States, trade associations and other organisations. However the author's contemporaneous notes taken at meetings with representatives of Member States, trade associations and other organisations indicate that, in general, participants are not well informed of the EC internal market technical legislative process.

Participant observation was, inevitably, one of the specific methods included in the fieldwork of this research. However, as a result of the lack of structure in the data collected the data was not expected to be particularly helpful in the primary analyses, but was expected to be of considerable benefit in providing corroboration of the primary research findings.

#### 4.2.2.4 Self-completion questionnaires

Consideration was given to the possible use of self-completion questionnaires for this fieldwork. Initially self-completion questionnaires looked to be a straightforward option. The necessary sequence of events; prepare questionnaire, identify respondents, send out questionnaires, wait for completed questionnaires to return and analyse the data; seems quite innocuous and straightforward. In order to evaluate the suitability of this specific method for this research it is helpful to consider in more detail some of the steps in the sequence identified above.

The preparation of the self-completion questionnaire itself must be done taking due regard of the aim and objectives of the research as set out in Section 1.3.1. In itself a relatively straightforward process but a process that, for this research, has two major drawbacks. The first of these drawbacks relates to questions about the EU institutions. There is a need to ask tiered questions, first about all of the EU institutions and then about a sub-set of the EU institutions that are involved in the EC internal market technical legislative process. Having thus established the respondent's level of knowledge of the basic institutions there is a need to assess the respondent's knowledge of how people become members of the institutions that are involved in the EC internal

market legislative process. In order not to make the self-completion questionnaire unnecessarily burdensome, this assessment should be restricted to those institutions that are involved in the EC internal market legislative process. This would involve listing the EC institutions of interest, and the information in this list could then be used to modify the answers to earlier questions. Any such modification of answers (Bryman, 2000) would lead to the measured level of knowledge being enhanced beyond the actual level of knowledge, for those respondents who may take advantage of these 'hints'. Since it would not be known how many, if any, respondents had made use of these unintentional hints then the measurement of the level of knowledge would be rendered unreliable.

In order to facilitate a completion rate as high as possible for the self-completion questionnaires the effort required by possible respondents should be minimised. This would be achieved by keeping to a minimum the number of open ended questions and making maximum possible use of 'tick boxes' (Robson, 1999) to indicate the choice of answer for questions where the respondent's answer is indicated by a choice within some form of multiple choice. The second drawback to the use of self-completion questionnaires in research such as this relates to the validation of answers to questions that request self-assessment of the level of knowledge in some particular area. In this type of question the respondent would be requested to indicate his perceived level of knowledge of a defined subject by marking the appropriate tick box from a ranking multiple choice. There is then the need to have the respondent write down what he knows of the subject under question so that the researcher can make a value judgement about the validity of the self-assessment. Responses to such questions may not be provided or may be difficult, or even impossible, to decipher. In such cases it would not be possible to validate the self-assessment, thereby limiting the value of the self-assessment.

For this research the total population of identifiable possible respondents is limited, particularly for certain categories of target respondents, this would include Member State officials and enforcement officials. Moser and Kalton (1989) suggest that the response range for self-completion questionnaires is 10% - 90%. Given that this research project is purely small scale private research without any official backing that can be quoted to encourage participation, then there exists a real risk that the response rate achieved would be towards the low end of the range quoted by Moser and Kalton



(op. cit.). Moser and Kalton (op. cit.) also suggest that the cost per completed questionnaire may be higher than the cost per interview.

Additional disadvantages of a self-completion questionnaire approach to this fieldwork includes the lack of direct contact with respondents, the difficulty of giving something back to the respondents, this would include the opportunity for respondents to ask questions of, or enter into discussion with, the researcher.

It is accepted that for some research projects, where the target population is large, easy to identify and access, a low response rate can be tolerated because the total number of completed questionnaires can be sufficient for subsequent analysis, then the self-completion questionnaire can be an appropriate method. However, for this research project, for the reasons given above it was decided that the self-completion questionnaire was not the appropriate fieldwork method. Many of the disadvantages of self-completion questionnaires that have been highlighted here can be satisfactorily dealt with by the use of interviews. The next sub-section looks in detail at this method.

#### 4.2.2.5 Interviews

One of the requirements for the fieldwork of this research, established in Section 4.2.2, was the need for direct contact with internal market practitioners. Robson (1999) makes the observation that interviews are a kind of conversation, but a conversation with a purpose and conversations involve direct contact. Direct contact clearly includes face-to-face contact with respondents and in this context direct contact will be extended to include contact with respondents via a telephone network. Interviews, by telephone or face-to-face, can therefore be seen to meet the requirement of direct contact.

The need for control of the sequence of questions being put to a respondent was established in Section 4.2.2.4. The requirement for control of the sequence of questions derives from the necessity to ensure that no respondent can use 'hints' from any given question being used to assist in answering any other question. This requirement for control of the sequence of questions put to a respondent can be met using an interview.

May (2001) establishes that most surveys concern themselves with either factual questions or opinion questions each generating an associated data type. Sections 1.3

and 4.1 establish the requirement within this research for the collection of both types of data via the fieldwork. The first of these two data types is factual, data that may be assessed for correctness. The second data type is opinion or perception, data that individually may not be amenable to assessment in the sense of correct or incorrect. It is, however, plausible to attempt to assess if perceptions or opinions, held by external observers are consistent with any message that an individual, or organisation, is attempting to convey. Within this research there is no suggestion that the EC institutions are attempting to convey any consistent message about how well they are performing in the EC internal market technical legislative process. However, there is available a measure of the output from the EC internal market technical legislative process – the official view of the EC internal market discussed in Section 3.2.1. Thus, for this research, the second data type, opinion, perception, has value in attempting to construct an overall qualitative judgement about how well the EC technical legislative process functions by comparing the official view of the state of the internal market and the overall view as expressed by the respondents. What would then be achieved would be an overall judgement that has validity and would be a judgement that could be tested for correctness by repeating the fieldwork on other samples of the population.

A fieldwork method that allows for the inclusion of questions designed to elicit facts and opinions (Robson, 1999) is that of the interview. Robson also identifies what may be considered to be a spectrum of interview types that range from the unstructured, through semi-structured on to the fully structured. The level of control exercised by the interviewer increases across this spectrum. An alternative typology, that of respondent interviews and informant interviews, is suggested by Powney and Watts (1987). In this classification system the interviewer retains control for respondent interviews whereas the interviewer relinquishes control to the interviewee in informant interviews. The nomenclature used by Powney and Watts (op. cit.) is considered by this author to be somewhat misleading in that for the purposes of research questionnaires and interviews the words respondent and informant are considered to be synonyms and in turn are synonymous with interviewee. As a result there is possible ambiguity in the meaning of the terms 'respondent interview' and 'informant interview'. To avoid any such ambiguity of terminology in this research the classification system used by Robson (1999) will be used here.

It was established in Section 4.2.2 that for the fieldwork of this research there is a need for direct contact with respondents and there is a need for control of the sequence of questions put to respondents. Data on each of facts, knowledge, and perceptions are required to be obtained from respondents. It has been shown that interviews of all types allow direct contact with respondents and that, within the spectrum of interview types, the structured interview allows for maximum control by the researcher. For this fieldwork it was considered essential that no single question be allowed to provide the respondent with clues that would assist them in answering this, or later, questions. The necessary level of control can only be achieved through the administration of a structured rather than semi-structured or unstructured interview.

Based on the foregoing summary the decision was made that the primary fieldwork of this research project would be accomplished by use of structured interviews.

To prevent any misunderstanding within this thesis it should be noted that the term 'structured interview' may be the actual sequence of questions (Appendix II) put to respondents and may also mean the act of conducting the interview with the respondent. In each case the context of the use of the term structured interview will clarify which of the above meanings is intended. The details of why the structured interview takes the form that it does and how, and to whom it was administered are given in Section 4.3.1

#### 4.2.2.6 Evaluations (Tests of the system)

From the outset of this research it has been the intention to identify the European Community internal market technical legislative process and then to make an assessment of how well known and understood was this system, more details are provided in Section 1.3.1 Within sub-sections 4.2.2.1 to sub-section 4.2.2.5 the emphasis has been on identifying a method that allows a structured approach to the collection of data from respondents.

However, a dogmatic adherence to structured approaches to data collection should not be allowed to prevent additional data collection by unstructured methods. Participant observation, discussed in sub-section 4.2.2.3, is one possible unstructured method as is evaluation. Suchman (1967) provides the following definition of evaluation: '*A method for determining the degree to which a planned programme achieves its desired outcomes.*' The Suchman (op. cit.) definition of evaluation in the context of this

research could be seen to have the EC internal market technical legislative process as the 'planned programme' and a fully functioning EC internal market as the 'desired outcome'. The literature review, Chapter 3 (Commission, 1997), indicated the existence of an action programme as the method of achieving the fully functioning EC internal market. This author would argue, therefore, that for the Suchman (1967) definition of evaluation, in this context the 'planned programme' is the Commission's action programme rather than the EC internal market technical legislative process. It is to be expected that the efficacy of the EC internal market technical legislative process would have an effect on the implementation of the action programme, but the action programme is not the subject of this research.

From the forgoing, it would appear that evaluation as a method is inappropriate for this research, this research does not meet the Suchman (op. cit.) definition of assessing a programme. However, part of this research has, almost by accident, been directed at an assessment of how accurately the observed process for EC internal market technical legislative process mirrors the documented process. The assessments of the observed process have been made primarily through legitimate enquiries to the EC institutions that are part of the observed process.

For this research, evaluation as a method has, therefore, been rejected in favour of a similar method to be known as 'Tests of the system' where each enquiry made of the extended system, defined in Section 2.4, is considered to be a 'Test of the system'.

### 4.3 Research procedures

Within this section, details are provided to explain the way that the decisions to proceed with certain fieldwork methods identified in Section 4.2 were implemented.

Three specific fieldwork methods; participant observation, structured interview and tests of the system; were identified in Section 4.2 as appropriate for this research. These three specific methods together provide a spectrum of structure to data collection. As is to be expected, the structured interview allows the researcher to be very much in control of the type and sequence of data collected. The researcher is rather less in control when testing the system since the system being tested has a limited number of external access

points through which tests can be applied. In addition the researcher cannot be sure who will respond to any given enquiry, test of the system. Participant observation can only be applied when groups of people, whose views and knowledge are of interest to the researcher, meet together for some reason and the researcher is invited, or is otherwise allowed, and is able, to attend the meeting. These meetings may be part of a series of meetings or they may only be called on an *ad hoc* basis. Thus, it can be seen that the researcher had very little control over participant observation.

#### 4.3.1 THE STRUCTURED INTERVIEW

The structured interview used in this research (Appendix II) was constructed independently, specifically for this research, it did not rely on repeating the work of earlier researchers. The general population of the European Community, and of any individual Member State such as the United Kingdom, has access to products that are legitimately available for purchase within the EC internal market. Only a very limited sub-set of the general population has a direct responsibility to ensure that products available for purchase within the EC internal market comply with all of the relevant technical legislation. This sub-set of the general population would be expected to be better informed than the general population about the EC internal market technical legislative framework and of the processes that create this technical legislative framework. This sub-set of the general population became the population from which the research sample of respondents was drawn. It was not a practical, achievable, task to identify each of the individual members of this population. To adequately identify this population would require a detailed knowledge of at least all of the manufacturing companies in the UK and also those individuals within those companies with responsibility for compliance with EC internal market technical legislation. The sample drawn from this population could not, therefore, be a random sample.

The research population was drawn from the population of internal market practitioners. The population of internal market practitioners can be viewed as comprised of four groups of people each with different responsibilities: regulatory, enforcement, manufacturing and independent technical approval. Each of these groups was represented in the research population. The groups as described were not of equal numerical size but it was seen as advantageous that data was available from members of

each of the groups. With the constraints outlined the initial sample of respondents was selected by the author based on his existing knowledge and included representatives of each of the identified groups. To achieve the target of forty respondents the strategy adopted was that early respondents from each group would be encouraged to suggest additional potential respondents – a strategy that met with success.

With the exception, perhaps, of the regulators who are likely to be found mostly within the London region, as national government officials, the groups of people were expected to be geographically dispersed across the United Kingdom. This geographic spread of potential respondents was a significant factor in determining whether the norm for conducting the interviews would be face-to-face or by telephone. The logistics and costs likely to be involved in face-to-face interviews were such that an early decision was made that the norm would be for the interviews to be conducted by telephone.

The sample of practitioners selected for this research project was, initially, persons already known to the author and subsequently others made known to the author by other internal market practitioners. In that the selected respondents were all internal market practitioners, rather than randomly selected from the general population, it could be argued that the respondents should be described as a 'purposive' sample. Robson (1999) describes purposive sampling in the following way:

*The principle of selection in purposive sampling is the researcher's judgement as to typicality or interest. A sample is built up which enables the researcher to satisfy his/her specific needs in a project.*

As a result of prior personal knowledge of the respondents, or because they were personally recommended, each was approached individually and directly. No approaches to respondents were made via organisational gatekeepers such as human resource management functions. There is some evidence (Whitney, 2003) that some companies have a policy of not allowing staff to respond to questionnaires of any kind, no barriers of this type were encountered and no potential respondents declined to take part in the research at the initial approach.

Following the initial approach each potential respondent was provided with a copy of an introductory letter (Appendix III) setting out the conditions of the interview. At this

point in the process one potential respondent felt unable to participate because he felt, on reflection, unable to justify to his organisation the use of his time in this way.

Robson (1999) makes a number of comments about the time aspect of interviews. Two comments in particular were taken as important guidelines for the construction of the structured interview. The first comment, suggesting that an interview with duration less than half an hour would be unlikely to be valuable is a comment with which the author would agree. The second of Robson's (op. cit.) two comments was interpreted to mean that any interview scheduled to take more than an hour was an unreasonable demand on anyone's time, and if declared to a potential respondent, would be likely to reduce their willingness to participate. A limit of one hour was therefore set as the target interview completion time.

The final version of the structured interview (Appendix II) was constructed by the author after a number of preliminary drafts that were each administered to internal market practitioners. In addition to the author's own self-assessment of the success, or otherwise, of each trial there was a discussion with the respondent to obtain their comments on the trial. During these discussions face validity (Robson, 1999) in particular was assessed. Those practitioners who kindly contributed to these trials were not invited to take part in the formal research reported in Chapter 5. As the work progressed the appropriateness of Bell's (2001) comment: *'though common sense and the ability to write plain English will help, that will not be sufficient.'* was reinforced. The additional, simultaneous, requirements of clarity, succinctness and relevance to the aim and objectives of the research, Section 1.3.1, were also taken into account. Robson (1999) and Berdie, Anderson and Niebuhr (1985) each offer general guidance on the construction of questionnaires. In particular they stress the need for clarity in the questions, stratifying questions to ensure that general questions are asked before specific questions and to know the population surveyed so that appropriate language is used in the questions.

The total set of questions was such that they could be assigned to six groups. These groups were then ordered to provide core questions (Groups A – E) and a miscellaneous set (Group F) of auxiliary questions. Answers to Group F questions were to provide data to assist in the interpretation of data generated by the core questions. Structuring the questions in this way provided a means of managing the time of each interview.

If everything went to plan, each interview would be completed within the nominal one hour allocated. Where an interview time overrun appeared to be likely, the interview management options available to the interviewer were to either terminate the interview at the end of Group E questions or to attempt to negotiate with the respondent to allow the Group F questions to be completed. A summary of interview completion times is given in Table 5.22. In only two instances were over-running interviews terminated at the end of Section E.

In this research, as in any significant interviewing situation, a decision has to be made on the number of interviewers. The basic choice to be made is between the researcher conducting all of the interviews personally or to train others to conduct some, or all, of the interviews. If a substantial number of interviews is to be conducted then clearly there may be a need to delegate the interviewing to a proportionately large group of interviewers, such a situation is attended by its own additional problems related to consistency that are not evaluated here. For this research, where the number of interviews was to be restricted to a nominal forty, it was a practical proposition for the researcher to conduct all of the interviews personally. Three benefits of the researcher's decision to conduct all of the interviews personally exist. The first benefit is that the researcher was not required to devote time to training other interviewers. The second benefit was that there was an improved likelihood that each interview would be conducted according to the eleven task rules set out by Brenner (1981) as cited in Powney and Watts (1987). The third benefit is that the researcher is able to give something back to the respondents during the interview, with caution in order not to affect the outcome of the interview, and after the end of the interview. This 'giving back' to respondents took the form of an opportunity for the respondent to discuss any of the areas covered in the structured interview.

Arising from the decision to conduct the interviews by telephone is a question relating to the quality of the data obtained as compared to the quality of the data that would have been achieved had the interviews been conducted face-to-face. Powney and Watts (1987) suggest that limitations to the channels of communication between interviewer and respondent exist when conducting interviews by telephone and these limitations may restrict the quality of the data obtained. The interviews for this research were to be via simple voice communication, communications were not enhanced by the use of



video links. Sykes and Hoinville (1985), cited in Powney and Watts (1987), state that for simple telephone interviews: '*Communication between respondent and interviewer is limited to verbal and paralinguistic utterances with neither person able to see the facial expressions, gestures and other non-verbal messages conveyed by the other.*'

The above quotation infers that, at least for educational research, the context of the Sykes and Hoinville quote, the limitations of the telephone system for conducting interviews produces disadvantages. The author's experience in earlier work (Rogers, 1998), confirmed by this research, contradicts the view of Sykes and Hoinville (1985). In this research the concealment of body language by each of the interviewer and respondent was seen as an advantage. Such an advantage was most apparent with knowledge testing questions. The knowledge testing questions were those that provided qualitative answers. Often, through the verbal communication from the respondent attempting to answer these questions, it was evident that they were keen to demonstrate a high level of knowledge but they sometimes failed to achieve this objective. With a broader range of communication than was available using standard voice communication over the telephone it is the author's assertion that tension between interviewer and respondent could increase. For the author, the face-to-face interviews conducted, albeit limited to three, were judged as more difficult to control, and more stressful for the interviewer, than those conducted by telephone. A finding confirming the early decision to use telephone interviews as the norm.

For those questions where opinions were sought, giving rise to qualitative data that was always 'correct', the restrictions in communication by the use of a telephone rather than face-to-face interview were not seen as either advantageous or detrimental to the data collection process. This view is held on the basis that the respondents were taking part in what was understood by them to be an open enquiry, the respondents were not being asked to provide data in support of particular views. Had respondents been asked to provide qualitative data in support of particular views then the 'honesty' of the replies could perhaps have been better assessed in face-to-face interviews by observing body language.

Subsequent to the academic decisions about the way interviews would be conducted it became necessary to undertake a health and safety risk analysis of the fieldwork for this research. The risk analysis concluded that the researcher was exposed to less hazard

when the fieldwork was conducted by telephone as compared to the hazard exposure when conducting face-to-face interviews. For each of the two possible fieldwork methods, telephone or face-to-face interviews, the risk assessment gave an acceptably low risk to the researcher. The outcome of the risk assessment can therefore be seen not to contradict the decisions made on other criteria.

Chapter 2 'The law making process' has identified the EC internal market technical legislative process. Section 3.2 of the 'Literature survey and review' provides analyses of the EC internal market and its technical legislative process as seen by those who are part of the system and by external observers of the system. Internal market practitioners' views are under represented in Chapter 3, not because of any research bias but because little evidence could be found. The fieldwork of this research was conducted to gain an insight into the knowledge and views of the EC internal market held by practitioners in the EC internal market thus contributing to a reduction in the under representation of their views in the literature.

The structured interview used for this fieldwork is nothing more than a specifically designed questionnaire to facilitate the collection of previously identified data. The data required for this research was in support of the aim and objectives that were established in Section 1.3.1. It is clear from the objectives of Section 1.3.1 that the data to be collected would be of two types, factual and opinions, perceptions, Section 4.2.2.5.

The factual data collected was in three forms. The first form was quite clearly qualitative and not requiring detailed analysis – name of respondent, contact details etc. The second form was knowledge based and was amenable to being recorded in quantitative form – for example the number of EC institutions known. The third form recorded the presence or absence of a certain characteristic – for example whether or not the respondent had been trained by working with colleagues.

The opinion, perception, data was such that it divided into two classes of data. The first class of data being completely open, where there was no restriction on the range of opinion to be expressed. This data would remain qualitative for analysis. The second class of data was such that the range of opinion had limits and where the opinion fitted between these limits could be assessed by the application of Likert scales.

An examination of Table 4.1 reveals that not all question numbers of the structured interview appear in the table. The data relating to the identity of respondents does not relate to any of the particular objectives of the research. Questions in part F of the

**Table 4.1 Link between 'Activities in support of the Objectives' and fieldwork**

Activities in support of the Aims		Relevant questions of Structured Interview <sup>2</sup>	
a	Knowledge of EU/EC Institutions.	What is known by respondent?	B.1, B.2; B.3, B.4
b	Knowledge of EC Institutions' processes	What is known by respondent?	B.5, B.8, B.9
c	Knowledge of interfaces into EC Institutions.	What is known by respondent?	B.7
e	Suggestions for EC Institutions process improvements.	Training Improvement suggestions	A.7, A.8, A.9 E.1, E.2, E.4, E.5
f	Perceptions of reality of EC internal market.	Internal market – product Internal market – enforcement	C.1, C.2, C.3, C.4, C.5, C.6, C.7 C.8, C.9, C.10, C.12, C.13
g	Knowledge of standards and harmonised standards.	Standards – perceptions - use - process knowledge	D.1, D.2 D.6, D.7, D.8, D.9 D.3, D.4, D.5, D.10

structured interview were included to assist in the interpretation of other data rather than being directly linked to the research aims.

The method of recording data during the structured interview allows for some of the qualitative measures of respondents' perceptions to be turned into quantitative measures, in this instance using five point Likert scales. Other qualitative data from respondents was captured by recording key words, or short phrases, in the relevant response box of the structured interview (Appendix II). Where used, each Likert scale may be taken as an indicator of a perception. The aggregation of related indicators may be used to provide data on what may be considered a dimension of a particular concept. In addition several dimensions of a concept may be aggregated to provide a broader

<sup>2</sup> Some questions in the Structured Interview (Appendix II) are sub-divided e.g. question B.5 is sub-divided into B.5, B.5.1 and B.5.2 Where this occurs all sub-divisions of the question are included where reference is made to B.5

based measurement of that concept. Table 4.2 shows how three concepts of perceptions related to the EC internal market link, in stages, to specific questions of the structured interview.

**Table 4.2 Measurement of concepts**

Concept	Dimensions	Indicators – Structured Interview Question Numbers	Range of Possible Scores	
Completeness of EC Internal Market.	Product	C.1, C.2, C.3, C.4	4 - 20	6 - 30
	Enforcement	C.8, C.10	2 - 10	
Value of Standardization.	Perception	D.1, D.1.1, D.2	3 - 15	6 - 30
	Use	D.6, D.7, D.8	3 - 15	
Difficulties with Directives.	Introduction	C.5	1 - 5	2 - 10
	Age related	C.7	1 - 5	

#### 4.3.2 TESTS OF THE SYSTEM

At the outset of this research there was no intention to systematically test the EC internal market legislative process, and the extended system that has been identified in Section 2.4. It was not until this research work was well under way that the various enquiries made of, and through, the extended system were recognised as an identifiable fieldwork method to provide useful data on how enquiries made by practitioners would be viewed and dealt with.

At no time in this research were enquiries made of the system just to test the system, each enquiry was the natural follow on to an earlier discovery. When enquiries were made they were expressed as simply as possible to provide the respondent, often unknown, the best possible opportunity to supply a full and complete answer. At no time was there any attempt to trap either the system, or the individual respondent, into providing any answer that would show them in an unnecessarily unfavourable light. Some of the answers that were received undoubtedly expose the system unfavourably, but these occurrences were not the result of the researcher's manipulations to encourage unfavourable outcomes. General ethical considerations of this research are discussed in detail in Section 4.4. Within these general considerations the method of testing the

system, as described above, is not considered by the author to be in breach of any code of good ethics.

The tests, through enquiries, that have been made of the extended system were random events in time. Each enquiry was made when it was required, to build on the results of earlier discoveries. These enquiries were not made to any pre-determined plan.

There is no clear, straightforward, taxonomy of the tests made of the extended system. However, three broad groups of enquiries have been created to facilitate reporting them. The tests in each of these three broad groups are individually explained and, for clarity, the summary of the final response is provided here rather than in Chapter 5. The overall analysis of these results is, however, left until Chapter 5.

#### 4.3.2.1 Tests related to the authority of an EC institution

The Consolidated Version of the Treaty Establishing the European Community<sup>3</sup> identifies the Economic and Social Committee as one of the institutions of the European Community. A publication entitled *Monitoring the Single Market* (ESC, 1999) was obtained to enable study of its analyses of the internal market. Across the front cover is emblazoned 'The European Economic and Social Committee'. Within the body of this publication there are references to each of 'Economic and Social Committee' and 'European Economic and Social Committee', there is also a clear statement that this publication is available in English, French and German.

The observations on the publication (op. cit.) give rise to questions related to the authority to change the name of the EC institution and concern for language rights of citizens when corresponding with EC institutions. The response from the ESC makes it clear that the name of the institution has not been formally changed but they use the name 'European Economic and Social Committee' to avoid confusion with national abbreviations. The response on language rights was that '*Monitoring the Single Market*' (ESC, 1999) was not an official publication of the European Community and therefore was not required to be available in all of the EC official languages, it was

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<sup>3</sup> N.1 above

pointed out that the documents referred to in the booklet (op. cit.) are available in all of the official languages.

The above data on presumption of authority and how an individual institution deals with the problem of many languages is evidence used in Chapter 5.

#### 4.3.2.2 Tests requiring a simple reply

Included within this group of tests are written requests in the form of letters, faxes or e-mails, directly to an institution for simple factual information. All letters sent out within this group of tests carried the author's address on the outside so that if they were undeliverable they could be returned. No enquiry letters were returned as undeliverable. Emails and faxes carry return address data that enables them to be returned if sent to an inappropriate place. No emails or faxes were returned as undeliverable. The assumption is made, therefore, that all of the enquiries by whatever delivery means was employed, reached their destination.

Examples of these tests include requests for the name of a committee that would be reviewing a specific piece of draft legislation or the reference number of a document so that it may be accessed through a library system. The data from these tests is presented in Section 5.2.4

Also included within this group of tests are requests for information made via a European Information Centre (EIC). The author's local EIC is located within the Essex Trade Centre of Essex County Library Headquarters at Chelmsford. The services of the EIC were called upon under two sets of circumstances. The first of these circumstances was to obtain information that could have been expected from an enquiry directly to an institution but the direct enquiry had failed. The second type of request to the EIC was for documentation when it was not clear what should be specifically requested, the request then relied on being attended to by an 'intelligent' system. The EICs, although locally operated, should be seen as a part of the core system as described in Section 2.4 since the EICs were created by the Commission, however their function is very much a support function. Data relating to tests of the system via EICs was, therefore, treated as a separate category

#### 4.3.2.3 Tests requiring an explanatory reply

Within this Section reference is made to the three major parts of the conceptual extended system, introduced in Section 2.4, for the generation of EC internal market technical legislation. The following descriptions of tests applied to the core, non-core and support parts of the extended system exhibit a range of complexity of enquiry.

#### CORE of extended system

The Robert Schuman Project. The Robert Schuman Project<sup>4</sup> was established to facilitate the training of members of Member State legal professions in European Community law. Preamble (11) (op. cit.) appears to be much wider in scope than Article 2 (1(a)) (op. cit.) and suggests that there is, or should be, a system in place to ensure uniformity of the penalties for breaches of, and of the application of, the rules governing the EC internal market.

Prior to the fieldwork of this research there was anecdotal evidence of non-uniform application of the EC internal market rules. The analysis of the fieldwork suggests that there is concern about non-uniform application of EC internal market rules. It appeared, therefore, to be a pertinent and legitimate question to ask how those aspects of Preamble (11) (op. cit.) not covered by the Robert Schuman Project (op. cit.) were to be dealt with.

Given that the Decision establishing the Robert Schuman Project (op. cit.) was an instrument of the European Parliament and of the Council written enquiries were made to their respective Secretariats to determine: *'What initiatives are in place to deal with the other aspects of Community law outlined in Preamble 11?'* The treatment of these letters of enquiry is significant. The Secretariat of the European Parliament has not seen fit to reply and no follow up enquiries have been made. The Secretariat of the Council responded as follows: *'We regret to inform you that your request falls outside the*

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<sup>4</sup> Decision 1496/98/EC of the European Parliament and of the Council of 22 June 1999 establishing an action programme to improve awareness of Community law within the legal professions (Robert Schuman Project), OJ 1999 L 196/24-27

*competence of the Council of the European Union. Please contact the European Commission Directorate General Justice and Home Affairs.* Given the executive role of the Commission this was perhaps not an unreasonable reply except that I was not asking how the Robert Schuman Project was going to operate but how those parts of the system outside of the Robert Schuman Project would be tackled. This response suggests that the Secretariat of the Council was unable to differentiate between policy and executive action. The Council Secretariat advice was followed and a reply was received from Directorate General Justice and Home Affairs stating that: *'Your letter does not fall within my department's area of responsibility. It has been reassigned to Directorate General Internal Market who will be sending you a reply.'*

A reply was received from Directorate General 'Internal market' but did not address the questions posed. The incompleteness of the reply was brought to the attention of the Directorate General 'Internal market' who then advised that my enquiry was outside their responsibility and that they had re-assigned my enquiry to Directorate General 'Justice and Home Affairs'. No-one appeared prepared to accept responsibility for my enquiry. The matter was not pursued and no further communications from the Commission, or elsewhere, were received.

The Internal Market Scoreboard. The Internal Market Scoreboard (Commission, 2001a) provides the Commission view on how well the EC internal market is operating, and includes a number of numerical analyses. Of significance for this test of the system was the information on transposition failures, pointers to other Commission documents and an inconsistency with another Commission document (Commission, 2001d). Within the Internal Market Scoreboard (Commission, 2001a) there was an invitation to provide feedback to the Director General 'Internal market' at the Commission, such an invitation suggests that the system should be receptive to constructive comments and questions.

Constructive feedback, together with some questions, was sent to the Director General 'Internal market' and a generally satisfactory response was received. However, the response relating to failures by Member States to properly transpose EC directives gave little indication that enforcement by the Commission would improve.



Access to documents. European Documentation Centres (EDC), in the UK at least, have traditionally been supplied with paper copies of relevant documents. EDCs are housed within university libraries but are open to the general public. In May 2000, on a visit to the author's local EDC at the University of Essex (UoE) it became apparent that there was a change in policy about the supply of documents to EDCs – they were now being supplied on CD Roms. An apparently innocuous change, but a change with significant effects. Documentation, on all media, in the EDC is classified as reference material, material that is not allowed to leave the library. CD Roms are read via computers and due to the UoE software licensing agreements their computers are only available to registered UoE students. The net result is that the general public are denied access to the more recently received EDC material. For this author at least the interim solution, not satisfactory for either the author or the UoE library staff, was for a member of the UoE library staff to operate the computer on the author's behalf. Negotiations by the author, and on the author's behalf, took place in an attempt to arrange a more satisfactory solution – those negotiations failed.

The author made representations to three points in the core system, as defined in Chapter 2, and the outline results of these enquiries are given in Table 4.3 below:

**Table 4.3 Indicating replies from enquiries**

<b>Enquiry to:</b>	<b>Date</b>	<b>Outcome</b>	<b>Outcome</b>
Commissioner Reding (Education and Culture)	25-09-00	Extensive response, but not satisfactory.	
Mr van der Pas (DG Education and Culture)	25-09-00	No reply	
Mr R Howitt MEP (Eastern Region MEP)	02-10-00	30-01-01 a promise of EP parliamentary question and notice of reply.	No further response.

For this author, and other users of the EDC at the University of Essex, the situation changed for the better when the UoE, on its own initiative and at its own expense, elected to subscribe for paper copies of documents for the EDC rather than to rely on the CD Roms issued by the Commission. There remains a period of approximately fourteen months for which material is not directly accessible.

Modernising the internal market. It came to the author's attention from an editorial piece in a trade magazine (Anon, 2001) that, via a web based questionnaire, the Commission was conducting a consultation on the future of the internal market. The online questionnaire was accessed with the intention to complete it, to be seen to be actively participating in the process of studying and affecting the future of the internal market. There were so many ambiguities in the questionnaire that it was felt that it would provide misleading or wrong data if the questionnaire was completed. Instead this author sent a letter to Commissioner Liikanen expressing concern at the ambiguities and setting out a number of comments on the existing process. From the comprehensive reply that was received two extracts are included here. The first extract: *'I would like to thank you for your letter of 15 August 2001, which contains very constructive remarks on internal market legislation as well as on the way in which the Commission has been conducting this consultation on the functioning of the internal market.'* suggests that my letter was read carefully. The second extract: *'In addition, the questionnaire exists in all official Community languages, which may occasionally create difficulties in finding the right terminology for non-specialists. We understand that this might have led to some ambiguities.'* suggests that the need to service the diversity of official Community languages can take precedence over the need for quality data.

#### NON-CORE of extended system

Modernising Petroleum Legislation. An important policy speech was made by senior officials of the United Kingdom Health and Safety Executive (HSE) at the Annual General Meeting of the Association for Petroleum and Explosives Administration, in April 2001 and was later published (Brazendale and Sargeant, 2001). The published text (op. cit.) was full of jargon and imprecise in its references. Based on the author's interpretation of the published work (op. cit.) an enquiry was sent to Mr Brazendale for confirmation of the interpretation and, if the interpretation was correct, for an explanation for the HSE's failure to comply with the transposition deadline of 1<sup>st</sup> May 2001 set by Article 14 (1) of the protection of workers directive<sup>5</sup>.

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<sup>5</sup> Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ 1998 L 131/11-23

The reply confirmed this author's interpretation of the published work (Brazendale and Sargeant, 2001) and also stated that: '*... a revised timetable for the introduction of the regulations required by directive 98/24/EC (Council, 1998) had yet to be agreed by the Minister responsible for the HSE.*' Failure to comply with directive 98/24/EC (op. cit.) within the required transposition time was simply dismissed as a task more difficult, and therefore more time consuming, than expected.

As at 6 September 2001 this author had made no decision about referring this apparent maladministration to the UK Parliamentary Ombudsman, a conflict of interest with the author's work with the Forecourt Equipment Federation (FEF) existed. This conflict of interest was discussed at the FEF Council meeting on 12 September 2001 where it was agreed that it was not in the best interests of the FEF to pursue the matter of the failure to comply with a transposition deadline. As a direct result of the FEF Council decision no further action on this matter was taken by this author.

## SUPPORT of extended system

New Electronics. In an editorial piece (Pitcher, 2001) providing comment on the electromagnetic compatibility (EMC) directive<sup>6</sup> reference was made to a draft amendment to the EMC directive (op. cit.). No information was provided to clearly identify the draft amendment nor was it suggested where a copy of this draft could be obtained. An enquiry was made of New Electronics for the Official Journal of the European Communities, or other sufficient, reference to track down the draft amendment. A reply was received but all it contained was a reference to a private organisation that should be able to supply the necessary details.

Plant and Control Engineering. An editorial piece (Nash, 2001) included several incorrect statements about the machinery directive<sup>7</sup> and a standards document (CEN,

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<sup>6</sup> Council Directive of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility (89/336/EEC)(EMC Directive), OJ 1989 139/19-26

<sup>7</sup> Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery (Machinery Directive), OJ 1998 L 207/1-46

1996). The errors and suggested corrections were brought to the attention of the editor together with an enquiry as to how these errors together with any necessary corrections would be brought to the attention of readers. On the day of receipt of the author's letter the editor telephoned the author, he apologised for the errors, wanted to publish some form of correction and requested of the author a short article explaining the difference between legislation and standards. The author submitted a short article that was accepted for publication, albeit after editing (Rogers, 2002).

#### 4.3.2.4 Test of the European Ombudsman's complaint system

The literature review of this research has relied, in parts, on access to EC institutions' documentation. With the Commission in particular there have been difficulties in gaining access to documents, some of these difficulties arise as a result of lack of knowledge, by the author, of the structure of internal Commission committees. Council Decision 1999/468/EC<sup>8</sup> sets out a framework of procedures for Commission committees and in particular, via Article 7 (4) (op. cit.), required the Commission to publish a list of all committees which assist the Commission in the exercise of implementing powers. Council Decision 1999/468/EC came into effect on 18 July 1999, within six months of that date the Commission was required to have published in the Official Journal of the European Communities (OJEC) the list of the relevant committees.

In May 2000 it appeared that access to the Commission list of committees would facilitate this research. Literature, and online, searches were made to locate the list of committees but these searches were unsuccessful. A letter was sent to the European Commission Representation in the United Kingdom for an OJEC reference to this list of committees. The reply made it clear that the list of committees had not been published.

Consideration was given to how pressure might be applied to expedite publication of the list of committees. A letter of complaint from an individual citizen to the Commission was seen as unlikely to have any noticeable effect. However, the European Ombudsman has a complaints procedure (European Ombudsman, 1999) to deal with complaints of maladministration. The information to hand appeared to meet the criteria for a complaint of maladministration to be accepted by the European Ombudsman and a

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<sup>8</sup> Council Decision of 28 June 1999 (1999/468/EC) laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ 1999 L 184/23-26

letter of complaint was sent on 1<sup>st</sup> June 2000. This letter of complaint would, hopefully, fulfil two objectives. The first objective was to obtain access to the list of Committees. The second objective was to provide first hand knowledge of the European Ombudsman's complaint system. There then followed interim correspondence, some of which invited the complainant to comment on the Commission's response to the European Ombudsman.

The case was closed, just over one year after the author's original letter, by the author's receipt of a letter from the European Ombudsman (Appendix V) upholding the complaint, this letter included a critical remark to the Commission. A 'critical remark' is defined by the European Ombudsman (Soderman, 2002) as: *'appropriate for cases where the instance of maladministration appears to have no general implications and no follow up action by the Ombudsman seems necessary.'* This author would not disagree with the definition of critical remark provided by the Ombudsman but does disagree that it is applicable to this case. Maladministration based on a claim of being too busy to comply with the law seems to this author to have general implication. The outcome from the author's complaint may be seen as a small victory but unfortunately the information that was initially requested, the list of Commission committees, was not revealed by the Commission.

The information that had originally been requested from the Commission was published in the Official Journal of the European Communities (Commission, 2000c) in August 2000, two months after the initial complaint was registered and three months before the Commission responded to the European Ombudsman's enquiry. The Commission, in their response to the Ombudsman, made no mention of the publication of the data that had been requested. All that the Commission put forward was a series of what they saw as valid reasons for failing to fulfil their obligations. The concept of assisting a citizen of the EU by providing a reference to what was by then in the public domain did not appear to occur to the Commission.

#### 4.3.3 PARTICIPANT OBSERVATION

The researcher, through his normal professional work, has been and remains in a position to act as a participant observer in a number of different forums. Five forums

have been identified as being of significance in providing data to complement and corroborate the data obtained by structured interviews. Attendance at the forums allowed assessments to be made of the knowledge and understanding of the EC internal market technical legislative process held by internal market practitioners for whom it was not possible to be included in the set of internal market practitioners individually interviewed. Of the forty to fifty additional practitioners whose views could be at least partially assessed in this way about seventy five percent were non-UK internal market practitioners.

The five forums that have been identified as being of significance to this research are individually described in sub-sections 4.3.3.1 thru 4.3.3.5. Confidentiality constraints limit the ability to divulge the precise list of participants, and the detail of the subject matter discussed, at these forums. None of these forums put records of their forum meetings in the public domain. The only research records are, therefore, in the form of contemporaneous, unpublished, notes taken at these forums. The data that was collected at these forums allows some triangulation of data collected via the structured interviews in support of objective 1, the data is discussed in Section 5.2.5

#### 4.3.3.1 UK trade association (PPMA/FEF) meeting with National Weights and Measures Laboratory (NWML)

In recent years the Engineering Committee of the UK trade association the Petrol Pump Manufacturers' Association (PPMA), reconstituted in April 2001 as the Technical Committee of the Forecourt Equipment Federation, has met periodically with staff at the National Weights and Measures Laboratory (NWML) to discuss various issues related to the legal metrology of fuel dispensers and other items of petrol filling station equipment. NWML is an executive agency of the Department of Trade and Industry, itself a ministry of the UK government. One of NWML's roles is to advise the appropriate government ministers on many aspects of legal metrology as practised in the UK and to take the lead on behalf of the UK government on negotiations within the European Community on directives that relate to legal metrology. As expected the NWML team at meetings with the PPMA/FEF included those people with direct responsibility for determining the UK government's position in European Commission and Council Working Groups. The Technical Committee of the FEF comprises senior

engineering representatives from its member companies. The member companies are UK manufacturing and service companies. The author attends these meetings as Chairman of the FEF Technical Committee.

Working drafts of proposals for a European Community Measuring Instruments Directive, which when adopted will be part of the internal market legislative framework, have existed for several years. The meetings between FEF and NWML provide opportunities to make enquiries of the present situation and to make suggestions, where appropriate, for possible changes to the current negotiating stance. As at May 2004, with the Measuring Instruments Directive<sup>9</sup> now adopted discussions between NWML and FEF continue but with a shift in focus away from the negotiating stance to that of understanding all aspects of the transposition into UK national law.

The normal NWML team attending these meetings were aware of the author's concurrent research interest. However, some NWML staff who only attend for parts of any given meeting may not have been aware of the author's concurrent research interest.

#### 4.3.3.2 European trade association (CECOD)

The European trade association to which the author has ready access is the Committee of European Manufacturers of Petroleum Measuring and Distributing Equipment (CECOD). CECOD, whose membership is drawn from ten EC Member States and two non-EC Member States, operates at three distinct levels. The first of these three levels of operation is the General Assembly. The General Assembly is held once per annum and is attended by chief executive officers of the member companies and does not concern itself with details of the EC technical legislative environment within which products are traded. The second level of operation is via a five person executive committee appointed by the General Assembly, this executive committee deals with matters as and when they arise. CECOD's third and most important level of operation is its Technical Committee. This Technical Committee is comprised of senior engineering representatives from CECOD's member companies. The author is invited to attend meetings of the Technical Committee, and its subsidiary 'Study Groups', as a result of

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<sup>9</sup> Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring instruments (Measuring Instruments Directive), OJ 2004 L 135/1-80

his direct involvement with the equivalent UK national trade association, FEF. No other people attend CECOD Technical Committee meetings by invitation.

For research such as that reported here meetings of the CECOD Technical Committee are significant in that they provide an opportunity to enter into discussions among colleagues from nine EC Member States other than the UK, one EU applicant state and one European Free Trade Association country. These discussions allow the author, albeit in an unstructured way, to make assessments of the level of knowledge and perceptions relating to the EC internal market and its associated legislative process that exist in countries outside the UK.

It should be noted that the prime reasons for the author attending these CECOD Technical Committee meetings are to assist the Technical Committee by bringing broad UK knowledge to the discussion and to take away, for dissemination to the FEF membership, information from other countries. Some of the people attending these CECOD meetings were not aware of the author's concurrent research interest.

#### 4.3.3.3 Western European Cooperation on Legal Metrology (WELMEC)

WELMEC is an inter-governmental organisation bringing together the legal metrology policy units of European states. EU Member States are full members, EU applicant states and EU aspirant states are admitted as Associate Members.

WELMEC operates at two levels. At the higher level those attending are Directors, or equivalent, of national legal metrology policy units possibly accompanied by technical advisers. The European Commission sees such meetings as being meetings of Member State governments and requires to be present. At a lower level WELMEC operates through a series of Working Groups (WG) that have been established to deal with specific tasks within the broad field of legal metrology. Of these WGs one, WG8 dealing with the draft, and more recently the adopted, Measuring Instruments Directive<sup>10</sup> was of particular interest to this research.

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<sup>10</sup> N.9 above



Until relatively recently each of the EC Member States had units within their national governments that dealt with legal metrology policy and technical laboratories where testing and type approval examinations of equipment could be undertaken. Some EC Member States have carried out various degrees of privatisation of their national legal metrology services. The result of these privatisations is that at WG8 meetings some EC Member State national policy officials may be accompanied by technical experts from private sector enterprises. WELMEC WG8 has extended invitations to European trade associations with a major interest in legal metrology to send representatives to WG8 meetings. Those European trade associations that do attend are allowed to take some part in the discussions but have no vote and, therefore, do not take part in any formal decisions. CECOD is one of the European trade associations invited to participate in WELMEC WG8 meetings and on occasions the author has been a member of the CECOD delegation.

From the above description it can be seen that WELMEC WG8 meetings are attended by EC Member State legal metrology policy experts together with technical experts from government departments and from private sector industry. Commission officials are also invited to attend.

WELMEC Working Groups, and indeed WELMEC itself, have no statutory role to play in the EC internal market technical legislative process. According to the UK National Weights and Measures Laboratory's Director for international affairs: '*WELMEC decided on its own to make an examination [of the MID], WELMEC had not been invited by the Commission to submit any formal opinion on the draft MID.*' However, meetings of WELMEC WG8 provide a useful forum for this research given that many of the EC Member State government legal metrology policy experts who attend WG8 are also members of a Council Working Group studying the draft, and adopted, MID<sup>11</sup>. This Council Working Group is part of the EC internal market technical legislative process but it is not open to anyone other than EC Member State delegates and officials from the Commission. Attendance at WELMEC WG8 therefore provides an opportunity to assess the level of knowledge and perceptions of the EC internal market and its technical legislative process of some officials from EC Member States.

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<sup>11</sup> N.9 above

Some of the people attending these WELMEC WG8 meetings were not aware of the author's concurrent research interest.

#### 4.3.3.4 European trade association meeting with European Commission officials

European trade associations have some rights of access to the European Commission to personally put their case about Commission proposals. In September 2000 the formal proposal for a Measuring Instruments Directive (MID)(Commission, 2000b) was published. At the October 2000 CECOD Technical Committee meeting agreement was reached on a number of criticisms of the proposed MID (op. cit.). It was agreed by the CECOD Technical Committee that a multinational delegation should arrange to meet with the relevant Commission officials to put to them the case for changes to be made to the proposed MID (op. cit.). This author was appointed as a member of the multinational delegation which met, as planned, with the relevant Commission officials in December 2000. CECOD's case for changes to the proposed MID was based on the Commission's perceived failure to follow each of several of the rules governing the content of EC internal market technical legislation.

The discussion following CECOD's opening presentation at this meeting provided an opportunity to explore the level of knowledge of, and attitudes towards, some of the EC secondary legislation that supposedly governs the work of Commission officials.

Some of the people attending this meeting were not aware of the author's concurrent research interest.

#### 4.3.3.5 UK trade associations meeting with NWML

A number of UK trade associations, whose members would be affected by any proposed Measuring Instruments Directive (MID)(Commission, 2000b), had concerns about the content of the Commission proposal for a MID (op. cit.). As a result of these concerns five UK trade associations met to discuss their perceived problems with the proposal in an attempt to identify common concerns. A number of common concerns were indeed identified. It was agreed that these same trade associations should make joint representation to NWML, the UK's legal metrology policy unit and home of the UK's

negotiators for the proposed MID. The purpose of the meeting was to attempt to persuade the UK negotiators to modify their objectives of the negotiations to take account of the problems perceived by those sectors of UK manufacturing industry represented by the five trade associations. In addition to the MID negotiator, senior management of NWML attended.

The author attended each of the meetings outlined above as the representative of the Forecourt Equipment Federation and was thus afforded an opportunity to make some assessments of the level of knowledge and perceptions of the EC internal market and its legislative process. The findings, from participation in the above groups, relating to knowledge and perception of the EC internal market and its associated technical legislative process are reported in Section 5.2.5

Some of the people attending this meeting were not aware of the author's concurrent research interest.

#### 4.4 Ethical considerations

Kent, in Burton (2000), outlines two basic theories in ethical philosophy. In the first of these, the deontological theory, the argument is that *'morals ought to be based on obligations to others'*. Whereas in the second, consequentialist theory, people, including therefore researchers, *'should seek to act in accordance with the consequences of their behaviour and minimise suffering and maximise well being'*. Kent subsequently suggests (op. cit.) that rather than engage in debate on the merits of the two theories it is more constructive to focus on four principles; autonomy, beneficence, non-maleficence and justice, to guide ethical analysis. In the context of this research these four principles provide for the right of self-determination for respondents and other participants, obligations on the researcher to do good and not to cause harm and that people should be treated fairly. This author fully embraces the four principles promulgated by Kent when interpreted within the framework of the consequentialist theory.

It is the opinion of the author that no significant ethical issues were raised by, or during, this research. Justification for this statement is provided by a review of the

requirements of 'Ethical Principles for Conducting Research with Human Participants (British Psychological Society)' reproduced in Robson (1999). The nature of this particular research renders inappropriate many parts of the 'Ethical Principles', for example '3.2 Research with children ...'. The ethical nature of the research reported here is demonstrated by identifying those parts of the 'Ethical Principles' taken from Robson (op. cit.), broadly mapping those of Kent, that could be considered to apply to this research and by providing one or more statements in response to each of those identified requirements. In addition to the specific ethical considerations set out below all normal courtesies were extended to the respondents, even when last moment postponements occurred. Similar courtesies were extended to all others attending forum meetings as described in Section 4.3.3

No inducements were offered to the potential, and actual, respondents to the structured interview other than the option for some informed discussion immediately post interview and an opportunity to receive a copy of any separate report issued covering the fieldwork of this research. There was a very high take up of the offer of any report.

Under each of the headings 4.4.1 to 4.4.4, whose requirements are taken from Robson (op. cit.), a statement is needed for one or more of the following three groups of people. The first of the three groups of people being the respondents to the structured interview, the second of the two groups being those people to whom requests for information were sent and the third group being those comprising the various forums where participant observation took place.

#### 4.4.1 GENERAL

*In all circumstances, investigators must consider the ethical implications and psychological consequences for the participants in their research.*

##### Response for respondents to structured interview.

The inclusion of the Introduction of the Structured Interview, this clearly sets out the objectives of the research. This Introduction was read to each participant immediately prior to conducting the Structured Interview, only when the participant responded in the affirmative that they were prepared to proceed did the structured interview begin.

The text of the Introduction of the Structured Interview had also been included in a letter (Appendix III) provided to each respondent, following their initial, informal, agreement to assist in the research had been obtained. Thus each participant had been provided with an opportunity to be aware of the conditions of the interview some time before the interview actually took place.

Response for those to whom requests were sent.

The researcher was aware that he had no right to waste the time of those working in the EC institutions by fabricating obscure tests of their systems. Each of the requests to EC institutions for information or clarification were legitimate requests that arose from the need to have access to information to complete what was incomplete information or to allow a proper understanding of published information.

From the records maintained by the researcher it was possible to determine how quickly and how thoroughly the EC institutions responded to requests for information. At no time were those within the EC institutions harassed for information. However, in some instances where there had been no response at all to a request, a repeat request was made some months later.

The one exception to the above was the exercise of the complaint procedure via the Office of the European Ombudsman. The European Ombudsman's complaint procedure requires that any complaint must meet a number of criteria before the complaint is accepted for investigation (European Ombudsman, 1999). My complaint, discussed in detail in Section 4.3.2, met the screening criteria and was accepted by the European Ombudsman for further investigation. The European Ombudsman subsequently upheld my complaint and thereby justified my action in raising the complaint.

Response for those comprising the forums where participant observation took place.

The author attended these forums in his professional capacity and participated in a manner entirely consistent with behaviour exhibited at similar meetings prior to embarking on this research project. At any given forum a number of the other

participants were aware of the author's concurrent research interest and none of these people at any time raised any objection to my presence. It was judged inappropriate to declare, at the beginning of any forum, that the author was attending in two capacities, participant observer researcher in addition to normal participant. In the normal course of events it would have been necessary to take account of the views and opinions of the other participants during the ongoing discussions. The only difference my additional role as participant observer made was, perhaps, increased note taking.

#### 4.4.2 CONSENT

*Whenever possible, the investigator should inform all participants of the objectives of the investigation. The investigator should inform the participants of all aspects of the research or intervention that might reasonably be expected to influence willingness to participate.*

##### Response for respondents to structured interview.

The inclusion of the Introduction of the Structured Interview, this clearly sets out the objectives of the research. This Introduction was read to each participant immediately prior to conducting the Structured Interview, only when the participant responded in the affirmative that they were prepared to proceed did the structured interview begin.

The text of the Introduction of the Structured Interview had also been included in a letter (Appendix III) provided to each respondent, following their initial, informal, agreement to assist in the research had been obtained. Thus each participant had been provided with an opportunity to be aware of the conditions of the interview some time before the interview actually took place.

##### Response for those to whom requests were sent.

Legitimate enquiries of the extended system, as described in Section 4.3.2, were not considered by the author as requiring the consent of the recipient of the enquiry.

##### Response for those comprising the forums where participant observation took place.

To those participants who were not aware of my dual role it was not considered possible to explain that the information made available at the forum may be used for two purposes. Given that all of the forums allowed for subsequent disclosure of the discussion the participants were deemed to have given consent to their views being recorded and disseminated.

#### 4.4.3 WITHDRAWAL FROM THE INVESTIGATION

*At the onset of the investigation investigators should make plain to participants their right to withdraw from the research at any time.*

*In the light of experience of the investigation, or as a result of debriefing, the participant has the right to withdraw retrospectively any consent given, and to require that their own data, including recordings, be destroyed.*

##### Response for respondents to structured interview.

The inclusion of the Introduction of the Structured Interview, this clearly sets out the objectives of the research. This Introduction was read to each participant immediately prior to conducting the Structured Interview, only when the participant responded in the affirmative that they were prepared to proceed did the structured interview begin.

The text of the Introduction of the Structured Interview had also been included in a letter (Appendix III) provided to each respondent, following their initial, informal, agreement to assist in the research had been obtained. Thus each participant had been provided with an opportunity to be aware of the conditions of the interview some time before the interview actually took place.

##### Response for those to whom requests were sent.

Legitimate enquiries of the extended system, as described in Section 4.3.2, were made in the expectation of reply, given that the enquiries were made of nominally open organisations. No reply, a *de facto* withdrawal, was then seen open to any reasonable interpretation by the author without breaching any ethical code.

Response for those comprising the forums where participant observation took place.

This situation has proven to be the most difficult to rationalise. The forums attended, including those where negotiations rather than just an exchange of views took place, always catered for those attendees who did not wish to actively participate, thus their right to withhold their opinions from the author was not diminished by the author's dual role.

#### 4.4.4 CONFIDENTIALITY

*Subject to the requirements of legislation, including the Data Protection Act, information obtained about a participant during an investigation is confidential unless otherwise agreed in advance.*

Response for respondents to structured interview.

The inclusion of the Introduction of the Structured Interview, this clearly sets out the objectives of the research. This Introduction was read to each participant immediately prior to conducting the Structured Interview, only when the participant responded in the affirmative that they were prepared to proceed did the structured interview begin.

The text of the Introduction of the Structured Interview had also been included in a letter (Appendix III) provided to each respondent, following their initial, informal, agreement to assist in the research had been obtained. Thus each participant had been provided with an opportunity to be aware of the conditions of the interview some time before the interview actually took place.

Some of the questions of the Structured Interview were open questions looking for the participant to provide answers in their own words. Additionally, some of the ranking questions provided for the participant to supply additional data. Each participant who had agreed to take part in the Structured Interview was asked if they agreed to the use, anonymously, of quotes from any of their responses. All participants agreed to this request, one participant however only agreed on the basis that he was informed that any quotes from his responses would be notified to him before its inclusion in any report or



thesis. No quotes from this participant have been used by the author in any report or thesis.

#### Response for those to whom requests were sent.

None of the replies received contained the caveat 'confidential' and were thus considered to be effectively in the public domain. The reasonable use of such public domain information was not seen as breaching any ethical code.

#### Response for those comprising the forums where participant observation took place.

The declaration of affiliations of individuals to specific organisations was effectively a requirement of participation and became part of the public record of the forum. No use was made of such information in the analysis of views expressed. All attributions of views in the analysis were kept at the general level of type of participant; manufacturer, regulator, enforcer etc; to ensure anonymity and no breaches of confidentiality.

## 4.5 Summary

Sections 4.2 to 4.4 inclusive provide clear statements of what was required from the fieldwork, what was done, why it was done, who was involved and how potential challenges to the validity of the methodology were considered.

It was recognised from the outset of this fieldwork that of the total number of respondents for the structured interview relatively few, if any, would be drawn from the core and non-core parts of the system, Section 2.4. The data available via participant observation, while less structured than the data from the interviews, goes some way to redress the imbalance.

An important question remains: 'Would this overall methodology have validity if there was a complete imbalance in the source of respondents, for example if all of the respondents were drawn from manufacturing?' The author's view is that even with the situation described above the research findings would have validity. If the findings, with a sample of respondents drawn entirely from manufacturing or some other group outside of the core system, were to demonstrate a perfect knowledge of the EC internal

market technical legislative process and if the findings were to demonstrate a high level of satisfaction with the functioning of the EC internal market then the core system could take satisfaction in a job well done. Converse findings would have equal validity. If the findings were to indicate poor system knowledge and/or a low level of satisfaction with the functioning of the EC internal market then the core system could be legitimately challenged to perform to a higher standard.

## Chapter 5 Fieldwork findings and overall analysis

### 5.1 Introduction

Chapter 1 'Introduction' identifies the aim, and supporting objectives, of this research. The 'Cone of Refinement' of Figure 1.1 shows in outline how Chapters 2, 3 and 4, each with data collection elements, contribute to the pool of data that is available for the overall analysis carried out within this Chapter.

Chapter 2, 'The law making process', identified the European Community internal market technical legislative process, itself a necessary pre-requisite for a critical review. This foundation established what may be considered the target for the critical investigation, objective 1, and thus enables proposals for improvements to the process to be made. The foundation also provided the basis for the investigation of the knowledge of the EC internal market, and its associated technical legislative process, held by internal market practitioners, objective 2.

Chapter 3, 'Literature survey and review', documents the published literature. No significant literature was identified that assisted this research in its assessment of the knowledge and understanding of the European Community internal market technical legislative process held by internal market practitioners. The findings of the literature review are analysed in detail in Section 3.5. It is noteworthy that the literature review was only of limited value in the establishment of a launching point for the fieldwork.

Chapter 4, 'Methodology', discussed the possibilities that existed as methodological options and identified the selected, and applied, fieldwork methodology – structured interview applied to a purposive sample of internal market practitioners. The findings from the data collection endeavours, which includes data in support of objective 3, are reported and analysed in Sections 5.2.1, 5.2.2 and 5.2.3.

The remainder of this Chapter presents a summary of the overall findings and offers an analysis of the findings.

## 5.2 Fieldwork

The rationale of the fieldwork is fully described in Chapter 4 and the Structured Interview instrument that was employed for the primary data collection is reproduced in full in Appendix II. Additional fieldwork data was collected via tests of the system and participant observation. The data collected by each of these three techniques will be discussed separately.

### 5.2.1 STRUCTURED INTERVIEW

The structured interview is in several distinct parts as described in Section 4.3.1. The data collected is presented in the sequence of the parts.

#### 5.2.1.1 Overview of sample (Part A of Structured Interview)

The sample was comprised of 40 male but no female respondents. The lack of female respondents was not a characteristic of the sample deliberately introduced by the researcher. As explained in Chapter 4 the starting point for the sample was a limited number of potential, and actual, respondents already known to the researcher, some of the respondents provided suggestions for other respondents, all of whom were male. There is no reason to suggest that the gender imbalance in the sample affects the validity of the subsequent findings. However, it does suggest that the job functions from which this research sample was drawn are predominantly a male domain. Within this research no attempt was made to investigate the cause, or causes, of this sample's gender imbalance.

The distribution of job functions of the sample is given in Table 5.1. Table 5.1 shows the sample to be heterogeneous, not drawn from only one job function sub-set of European Community internal market practitioners. It is also clear from Table 5.1 that each of the four sub-sets of EC internal market practitioners are not equally represented in the sample. This is not seen as a deficiency in the overall sample since the populations of the sub-sets of EC internal market practitioners are themselves not equal. The sample taken is a reasonable purposive sample of European Community internal market practitioners.

It was not expected that the entire sample would have the same initial professional training. Table 5.2 shows the distribution of initial professional training of the sample and shows that EC internal market practitioners may possess any of several initial professional training backgrounds, albeit a preponderance of engineering as the initial professional training is evident.

**Table 5.1 The distribution of the sample as a function of job function**

<b>Number</b>	<b>Job Function</b>
3	Legislators (UK civil servants)
9	Enforcers (Local authority Trading Standards Officers and Petroleum Licensing Officers)
11	Manufacturers (Employees of manufacturing organisations)
17	Representatives of Trade Associations, Test and Certification Bodies, Standards Bodies and other UK government employees.
40	Total

**Table 5.2 The distribution of the sample as a function of initial professional training**

<b>Number</b>	<b>Type of Initial Professional Training</b>
5	Law
8	Science
22	Engineering
5	Other (Accounting, Building, Fire safety, Management and Marketing)
40	Total

The initial group of questions, the responses to which are reported above, were straightforward factual questions that provided an opportunity for the respondents to settle down and not feel threatened by either the process or the specific questions. The Structured Interview then moved on to assess an opinion before moving on to deal with a further tranche of factual questions.

The first 'opinion' question was to determine if the respondents were receptive to the idea of formal training related to their job function in addition to their initial professional training. Thirty six of the sample were in favour of such formal job related training. Further questions were then asked to determine the method, or methods, by which the individual respondents were trained for their current job function. Table 5.3 is a tabulation of the responses obtained, the four respondents who had indicated that

they were not in favour of formal training for their current job each indicated that they had themselves received some training. Four other respondents who had indicated that they were in favour of formal job related training claimed to have received no such training. It is clear from Table 5.3 that 'working with colleagues' was the most common method of receiving training for their current job. For 7 out of the 31 giving the 'working with colleagues' response it was the only method by which the respondent received specific training for their current job.

**Table 5.3 Tabulation of the sample's response as to how they were trained for their current job function**

<b>Number of responses</b>	<b>Training methods employed</b>
24	Formally – courses
31	Working with colleagues
14	Written procedures
5	Other training
4	Not trained

Recognising that EC internal market issues may be only a part of the current job function of respondents more specific questions were then asked about training related to EC internal market technical legislation. Only 12 respondents had received specialist training in the understanding and/or interpretation of EC internal market technical legislation. A summary of the methods by which the specialist training had been received is given in Table 5.4

**Table 5.4 Tabulation of responses about method by which specialist training was received**

<b>Number of responses</b>	<b>Method by which specialist training was received</b>
6	External seminar
4	Internal seminar
2	European Commission Workshop
1	From Trade Association representative

Of the 28 respondents who had not received any specialist training in the understanding and/or interpretation of EC internal market technical legislation 25 indicated that they

would be pleased or very pleased to receive such training, the other 3 respondents offered no opinion as to its value.

The next series of questions was related to the EC internal market technical legislative process rather than the output from the process. Five respondents said that they had received specialist training about the EC internal market technical legislative process and all of them agreed that the training had been helpful or very helpful. All 5 respondents indicated that the training had been received via an external seminar, one of these seminars had been provided by their professional institute and the others by independent trainers.

Of the 35 respondents who had not received specialist training 29 indicated that they would be pleased or very pleased to receive such training, the other 6 respondents offered no opinion as to its value. The 29 respondents who expressed the opinion that they would be pleased or very pleased to receive specialist training in the EC internal market technical legislative process were then asked what they saw as the benefits of such training. Table 5.5 provides a tabulation of their responses, in some instances more than one per respondent, which collectively can be interpreted to suggest that the respondents feel that they could do a better job if they were better informed of the EC internal market technical legislative process.

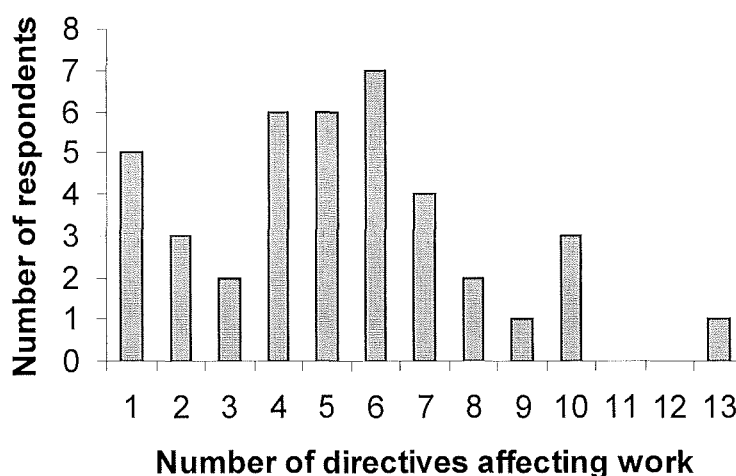
**Table 5.5 Tabulation of responses about value of EC internal market technical legislative process training**

<b>Number of responses</b>	<b>Comment</b>
9	No comment
9	Present understanding is poor
9	Helpful or save time if process is known
9	Generally useful or able to influence outcome if process known.

The final general piece of information obtained from the respondents was the number of EC new approach technical harmonization directives that can have an effect on their work. This data is summarised in Figure 5.1 and shows that the work of all respondents was affected by at least one EC new approach technical harmonization directive. All

respondents were legitimate members of the sample as internal market practitioners. The maximum number of EC new approach technical harmonization directives indicated as affecting their work was 13, this was the case for one local authority enforcement officer.

**Figure 5.1 The number of respondents as a function of the number of EC new approach technical harmonization directives affecting their work**



#### 5.2.1.2 EC internal market legislative process knowledge exhibited by the respondents (Part B of Structured Interview)

This Part of the Structured Interview lies at the very heart of the assessment of the knowledge of the respondents of the European Community internal market legislative process. It was clearly impractical, within the maximum intended interview time of one hour, to undertake a detailed examination of each respondent's knowledge of the overall processes so a proxy measure for this detailed knowledge was used. Within the EC internal market legislative process four EC institutions are actively involved. The institutions correctly identified by each respondent were then summated to provide a measure of the knowledge of the EC internal market legislative process that could be attributed to each respondent. This focussed question, B.2 of the Structured Interview, was preceded by the more open question, B.1, inviting the respondent to identify as many as possible of the institutions of the European Union. The data obtained from the responses to questions B.1 are summarised in Table 5.6



The data of Table 5.6 suggests that few respondents were aware, beyond the Commission, the European Parliament, the Council and the Court of Justice, of the names of European Union institutions. An alternative way of viewing the data is provided in Figure 5.2 showing the distribution of the number of EU institutions correctly named. From Figure 5.2 it is also possible to determine that the median score for respondents when asked to name EU institutions was 2.5

**Table 5.6 The number of responses for each of the European Union Institutions and number of incorrect responses**

Number of Responses	European Union Institution
31	Commission
30	European Parliament
19	Council
13	Court of Justice
3	Economic and Social Committee
2	Court of Auditors
1	Committee of the Regions
18	Incorrect responses

**Figure 5.2 The number of respondents as a function of the number of EU Institutions correctly named**

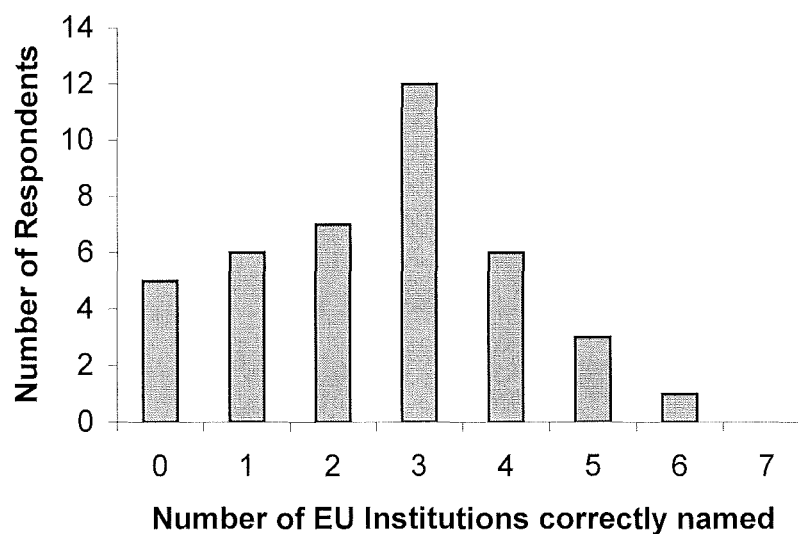


Table 5.6 indicates that in addition to the total of 101 instances of EU institutions being correctly named there were 18 occurrences of non-EU institutions being named. Table 5.7 gives a tabulation of the incorrectly named organisations and Table 5.8 provides a consolidation of the incorrect responses where the types of incorrectly quoted organisations are grouped together.

**Table 5.7 The number of responses for the various incorrect organisations quoted as being European Union Institutions**

<b>Number of Responses</b>	<b>Organisation Quoted</b>
7	CEN – a European Standards Organisation
3	CENELEC - a European Standards Organisation
3	Directorate General – of the Commission
2	Working Group – of the Council
2	Court of Human Rights
1	CECOD – European Manufacturers' Association

The data of Table 5.8 suggests that there is a level of confusion exhibited by EC internal market practitioners between EU institutions and what are two European standardisation organisations. European standardisation organisations are not EU institutions, their function is not part of the legislative process but, subsequent to the adoption of technical legislation, is to write technical standards underpinning the technical legislation. Additionally, parts, or subsets, of EU institutions, Directorates General of the Commission and Working Groups of Council, were not perceived as being part of the Commission or of Council but as separate institutions. Each of these two interpretations suggests a lack of process understanding. Such a lack of process understanding could cause failure of attempts by EC internal market practitioners to effectively input comments into the legislative process.

**Table 5.8 A consolidation of Table 5.8 into Types of Organisation Incorrectly Quoted as European Union Institutions**

<b>Number of Responses</b>	<b>Type of Organisation Incorrectly Quoted</b>
10	European Standards Organisation
5	Parts of EU Institutions
1	European Trade Association

The second, more focussed, question in Part B of the Structured Interview was concerned specifically with the European Community internal market technical legislative process although the form of this question was similar to the first question.

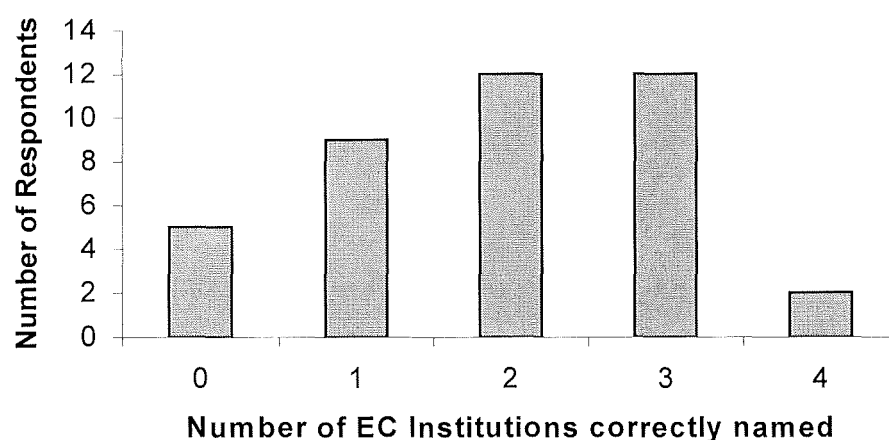
The data of Table 5.9 indicates that of the four EC institutions involved in the internal market technical legislative process only two of the institutions were known by more than half of the respondents. The data in Figure 5.3 shows that only two respondents were able to identify all four institutions and that the median number of institutions known was two. For the purposes of this research an objective measure of knowledge of the EC internal market technical legislative process has been taken to be knowledge of the EC institutions involved. Of the four EC institutions involved in the internal market technical legislative process the median number of these institutions correctly identified was two. The data of Table 5.9 and of Figure 5.3 together suggest that the level of knowledge of the EC internal market technical legislative process is poor.

The data of Table 5.10 echoes that of Tables 5.6 and 5.7 and provides further evidence of confusion about the role of European Standards Organisations and the status of Directorates General of the Commission.

**Table 5.9 The number of responses for each of the European Community Institutions and number of incorrect responses**

<b>Number of Responses</b>	<b>European Community Institution</b>
31	Commission
28	European Parliament
15	Council
3	Economic and Social Committee
4	Other, incorrect, responses

**Figure 5.3 The number of respondents as a function of the number of EC Institutions correctly named**

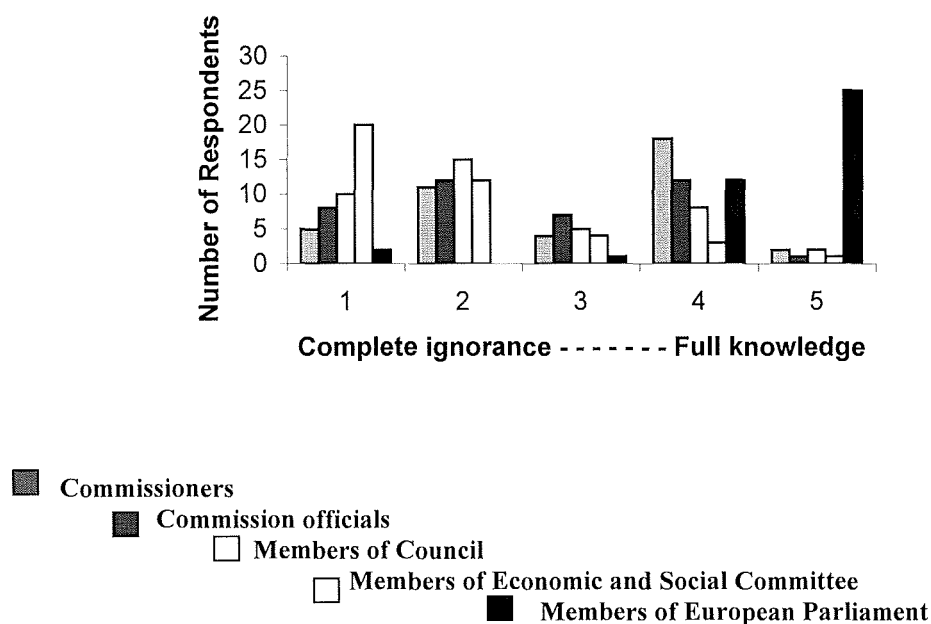


**Table 5.10 Types of Organisation Incorrectly Quoted as European Community Institutions**

Number of Responses	Type of Organisation Incorrectly Quoted
2	European Standards Organisation
2	Parts of European Community Institution

Knowledge of the individual institutions, while essential to an overall knowledge of the process, alone is insufficient for internal market practitioners who may wish to engage with the process. It is suggested that contributions to the process can best be made when there is also an understanding of who the players are within each of the institutions. Question B.3 of the Structured Interview was, therefore, designed to make a more detailed assessment of the respondents' knowledge of the membership of the EC institutions concerned with internal market technical legislative change. Figure 5.4 shows, for each of Commissioners, Commission officials and members of Council, the Economic & Social Committee and the European Parliament, the claim made for knowledge of the process by which people become members of the forgoing institutions. Respondents were requested to self-assess their knowledge on a five point Likert scale ranging from 'Complete Ignorance' (score 1) through to 'Full Knowledge' (score 5). The median score for each of the four institutions is shown in Table 5.11

**Figure 5.4 The number of respondents claiming knowledge of how people become members of EC institutions (Commissioners, Commission officials, Members of Council, Economic & Social Committee and European Parliament)**



**Table 5.11 Median scores achieved when self-assessing knowledge of how people become members of various EC institutions**

Median Score	EC Institution
5	European Parliament
3.5	Commission - Commissioner
2.5	Commission - Officials
2	Council
1.5	Economic & Social Committee

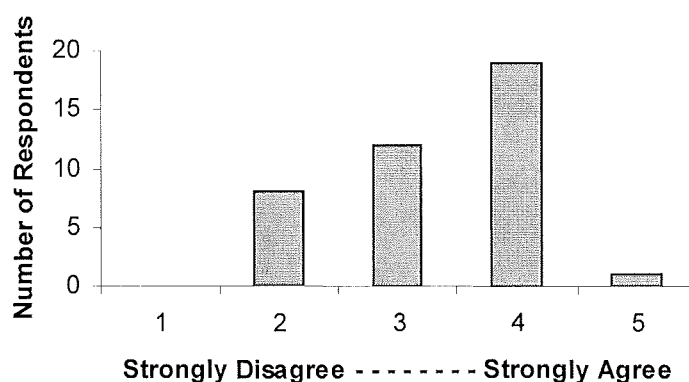
Acceptance of self-assessment data without some testing of the self-assessment would provide data of questionable reliability. Question B.4 was therefore included in the Structured Interview to provide a rough assessment of whether the claims of knowledge were exaggerated. Only 11 out of the 200 self-assessments made were judged to be exaggerated claims, the distribution of the exaggerated claims is shown in Table 5.12. Within the remaining 189 self-assessments no significant under-assessments of knowledge were identified.

**Table 5.12 Number of exaggerated claims of knowledge of how people become members of EC institutions**

Number of exaggerated claims	EC Institution
5	Commission - Commissioner
3	Economic & Social Committee
2	European Parliament
1	Commission - Officials
0	Council

Further enquiries to try to measure knowledge of the EC internal market technical legislative process were made via Question B.5. The data of Figure 5.5 shows that only half of the respondents agreed with the proposition that the 'EC internal market technical legislative process is a process that is formally described somewhere.' Of the 20 respondents agreeing with this proposition only 3 were able to correctly identify that the description is in the Treaty<sup>1</sup>. The more detailed knowledge that it is Article 251 as amended by Article 95 and by Article 250 was not seen as necessary in order to be scored as a correct response.

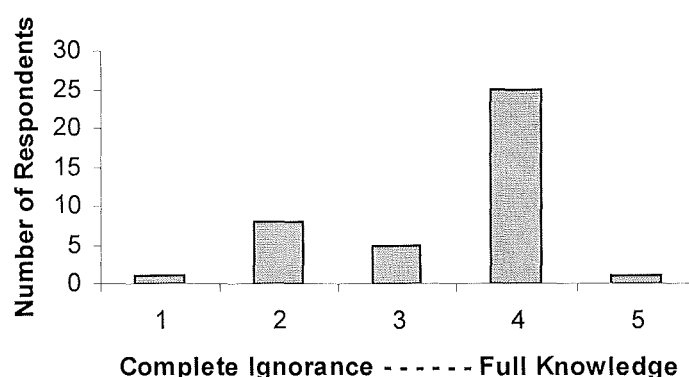
**Figure 5.5 Distribution of responses to the request for opinion of the statement 'The EC internal market technical legislative process is a process that is formally described somewhere.'**



There then followed a self-assessment question on the respondents' knowledge of the process, these responses are summarised in Figure 5.6

<sup>1</sup> Consolidated Version of the Treaty Establishing the European Community, OJ 2002 C 325/33-184

**Figure 5.6 Distribution of responses to a self-assessment of knowledge of the EC internal market technical legislative process**



The method of testing the self-assessment answers, summarised in Figure 5.6, was to tell each respondent that the EC internal market technical legislative process was formally described and then to ask the respondent if they knew where this formal description was to be found. The results of this question, for the sample of respondents as a whole, and for the subset of the sample who agreed with the proposition that the process is formally described somewhere, are given in Table 5.13

**Table 5.13 Distribution of responses about the formal description of the EC internal market technical legislative process**

Number of Responses	Number of Responses from sub-set of Sample	Classification of Response
7	6	No response
21	9	Incorrect
4	2	Partially correct
8	3	Correct
40	20	Total

From the above Tables and Figures it can be seen that only 50% of respondents thought that the EC internal market technical legislative process was important enough to be formally described, of this sub-set of the sample (20) only 3 correctly identified where the process was described. Of the 20 respondents who did not agree with the proposition that the EC internal market technical legislative process was important enough to be formally described 5 were, nevertheless, able to correctly identify where the process was described.

Of particular interest are the responses from respondents from manufacturing, 11 of the sample of 40 (See Table 5.1). As a result of legislative requirements and/or customer pressure each of these respondents from manufacturing works in an environment with ISO 9000 (ISO, 2000) series accreditation with its attendant process documentation needs. Only 4 of these 11 respondents expected to find a formal description of the EC internal market technical legislative process, the reason(s) for such a low expectation of formalism in the process that demands formalism from manufacturers' processes are not understood.

Question B.6 of the Structured Interview was included to investigate the expectations, and the reality, of receipt of information relating to proposals for change and how frequently responses are made to proposals for change. Table 5.14 shows the distribution of responses for what was considered to be what should happen. The data suggests that internal market practitioners do not perceive UK government departments or the EC institutions alone as being responsible for the dissemination of information about impending changes to legislation.

**Table 5.14 Distribution of responses to the question 'Who has responsibility for ensuring proposals for change are known?'**

<b>Number of Respondents</b>	<b>Who has responsibility for ensuring proposals for change are known?</b>
25	UK Government Department
10	Trade Associations
7	Own responsibility
4	Own Organisation's Management
3	National Standards Body
1	The Commission
1	Trade Press

As a corollary to the data of Table 5.14, Table 5.15 shows the distribution of responses for how information on new proposals normally becomes known to internal market practitioners.

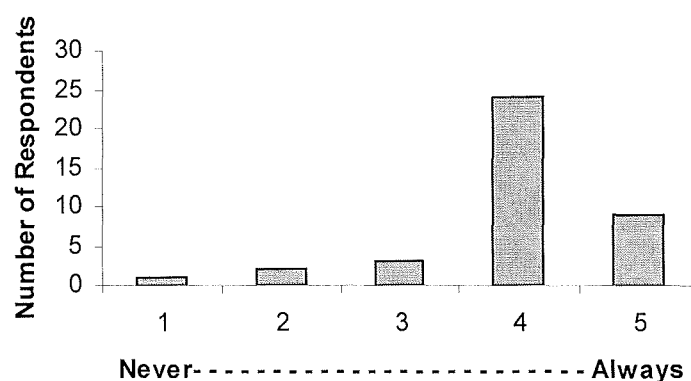


**Table 5.15** Distribution of response to the question 'How do proposals normally become known?

Number of Respondents	How do proposals normally become known?
20	Trade Associations
17	UK Government Department
16	Networking
4	Trade Press
3	Own Company Management
2	National Standards Body
2	The Commission
2	Luck/Chance

The data of Table 5.15 suggests that trade associations, UK government departments and networking are seen as almost equally important in the dissemination of legislative change information. Only four respondents noted the trade press as a method of receiving such information. This research is unable to provide any clarification about the amount of legislative change data carried by the trade press. No specific enquiries were made to determine if the trade press see it as part of their function to be a reliable resource for the dissemination of such information or if the readers of the trade press reliably pick up any messages related to new legislative proposals that might be carried. The data of Figure 5.7 suggest that a significant majority, 33 out of 40, internal market practitioners 'often' or 'always' comment on proposals for legislative change that they become aware of.

**Figure 5.7** Distribution of response of attempts to modify any proposals for change



The data of Table 5.16 suggests a recognition that there are several routes into the system for their comments on proposals for legislative change. Coupled with the data of Tables 5.13 and 5.14 the picture that emerges is that internal market practitioners see UK government departments and trade associations as their main contact points with the EC internal market legislative process.

**Table 5.16 Distribution of responses on input points for views on proposals**

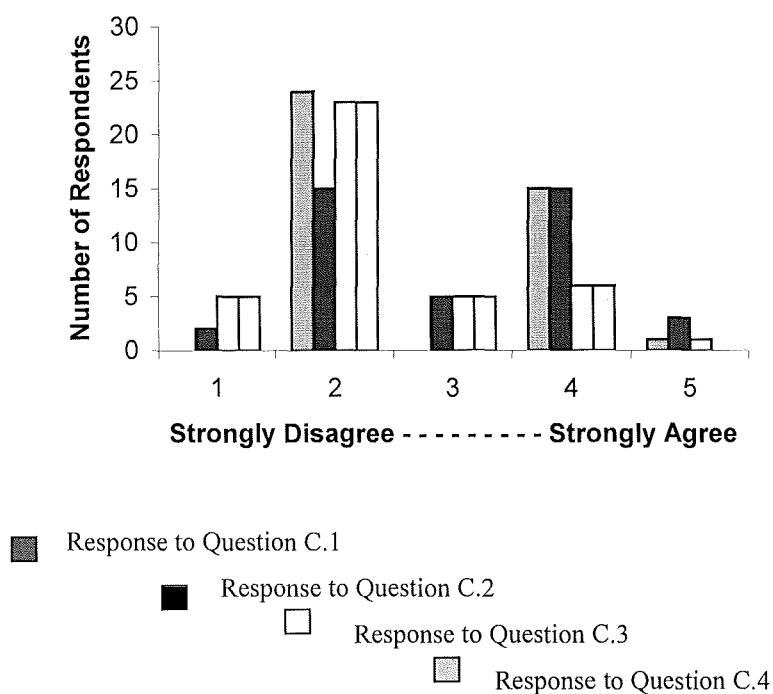
Number of Respondents	Input point for views on proposals
25	UK Government Department
21	Trade Association
9	The Commission
4	National Standards Body
3	European Parliament
1	Notified Body

#### 5.2.1.3 Perception of the internal market (Part C of Structured Interview)

The application of Part C of the Structured Interview has allowed measurements to be made of the views of EC internal market practitioners on the internal market as it existed at the time of their interview. Appendix II, Part C, contains the detail of the individual questions put to respondents and Table 5.17 shows how the responses to some of these individual questions are aggregated to provide a measurement of the concept of completeness of the internal market. Figures 5.8 and 5.9 show the distributions of responses to questions C.1 – C.4 and to questions C.8 & C.10 respectively.

**Table 5.17 Measurement of concept of completeness of the EC internal market**

Concept	Dimensions	Indicators – Structured Interview Question Numbers	Total Number Questions	Range of Possible Scores	
Completeness of EC Internal Market.	Product	C.1, C.2, C.3, C.4	4	4 - 20	6 - 30
	Enforcement	C.8, C.10	2	2 - 10	

**Figure 5.8** Distribution of responses for Questions C.1 – C.4

From Figure 5.8, where the four sets of columns represent the responses to each of questions C.1 thru C.4, it can be seen that there is a bi-modal characteristic to the responses for each of Questions C.1 and C.2. In the case of Question C.1, concerned directly with the perception of the extent of removal of barriers to trade, it could be argued that respondents did not find it easy to differentiate between 'Most' and 'Some' barriers being removed. However, what is clear is that only one respondent felt that all barriers to trade had been removed. In the case of Question C.2, related to the acceptability of essential paperwork to accompany products, EC type examination documents and manufacturers' declarations of conformity, the responses may be related to respondents' knowledge relating to differing sub-sets of Member States. The underlying reason(s) for this difference in perception was not investigated within this research but it could be that officials in some Member States may be more amenable to the concept of an internal market than the officials in other Member States.

European Community internal market technical legislation is, according to the provisions of Article 94<sup>2</sup>, achieved through the use of directives. Post 1985, New Approach, directives are concerned largely with the definition of safety or other

<sup>2</sup> N.1 above

consumer and worker protection objectives for products and the way that manufacturers are to demonstrate conformity with these objectives.

The demonstration of conformity with directives involves the affixing of a CE marking which in many instances is underpinned by third party type examination documentation or own responsibility declarations of conformity. New Approach directives in general provide little, if any, guidance on enforcement regimes, as a result Member States enforcement regimes do not become apparent until Member States each complete the transposition of directives into their own national law.

As a direct result of enforcement regimes not being set within EC directives there may be two dimensions for variation of enforcement. The first dimension is created by the Member States who are left to choose the enforcement regime. A major part of the choice of enforcement regime is whether it is to be proactive or reactive. In practice this means a choice of officials being involved in checking goods before use or whether officials only become involved in response to some form of complaint. The second dimension may be created within any given Member State. In the UK, for example, transposition usually results in legislation taking the form of a Statutory Instrument which, amongst other things, determines who will enforce the legislation. For most goods, this includes fuel dispensers and weighing instruments, enforcement of appropriate legislation is entrusted to local authorities.

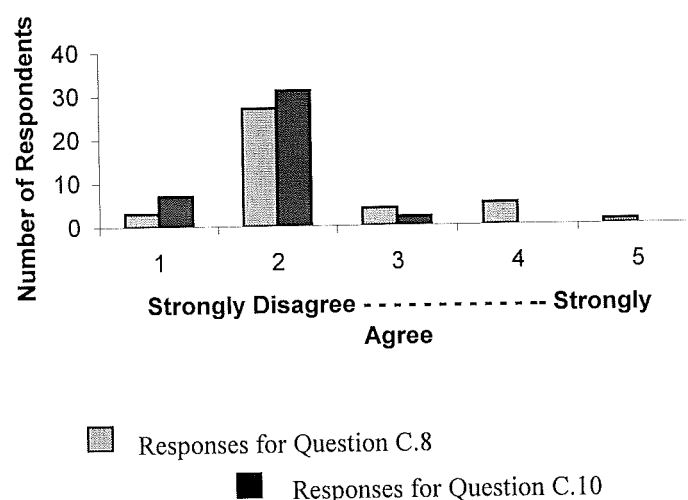
In the UK the actual enforcement of any given New Approach directive now is dependent upon possible variations in interpretation of the legislation between different local authorities and to the priority assigned to the different pieces of legislation that are enforced by resource limited local authorities. The net result of the existence of the two dimensions for variation in enforcement means that any product fulfilling all necessary provisions of applicable directives may meet with varying administrative obstacles in different locations within the European Community.

The data of Figure 5.9, constructed from responses to Questions C.8 and C.10, allows an assessment of the perceived effect of these possible variations in enforcement regime on the EC internal market. Question C.8 asked for an opinion on the statement 'Within any given Member State there are no variations in installation and use requirements.'

and C.10 asked for an opinion on the statement 'Enforcement regimes, for any given EC internal market technical harmonisation directive, are the same in all Member States.'

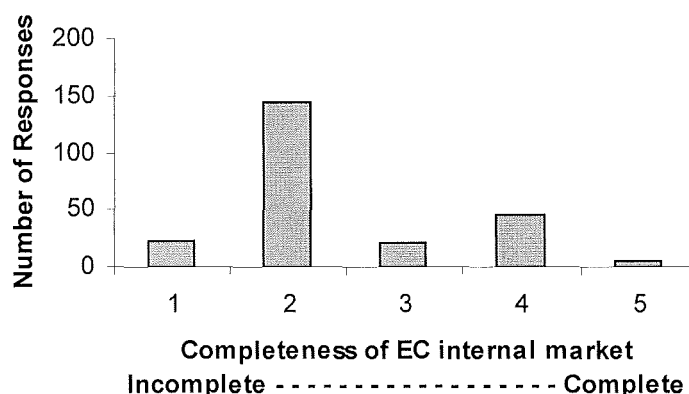
It can be seen from the data of Figure 5.9, where the two sets of columns represent the responses for questions C.8 and C.9 respectively, that the respondents were of the opinion that variations in enforcement regimes do exist along each of the dimensions outlined above.

**Figure 5.9 Distribution of responses for Questions C.8 and C.10**



It is now possible to construct consolidated views of the concept of completeness of the EC internal market. Consolidated views will be constructed in two slightly different ways. The first way is by providing an aggregate distribution of responses to questions C.1 – C.4, C.8 and C.10. This aggregation, within which there are 240 data points, is shown as Figure 5.10 and indicates that approximately 75% of the responses are of the opinion that the EC internal market is incomplete.

**Figure 5.10** Aggregate distribution of responses for Questions C.1 – C.4, C.8 & C.10



The second way of looking at the perception of the completeness of the EC internal market was to construct, for each of the 40 respondents, a score developed via the procedure indicated in Table 5.17 from their own individual responses to the set of questions C.1 – C.4, C.8 and C.10. The data thus obtained is summarised in Table 5.18 and suggests that more than 85% of the respondents see no significant improvement of the EC internal market over the previous system that was dependent on national rules. No respondents had a score that suggested that their perception was of a fully functioning EC internal market. Three UK legislators are included in the sample of internal market practitioners.

**Table 5.18** Distribution of individual respondents' aggregate scores relating to their perception of the completeness of the EC internal market

Number of Respondents	Range of Respondents' Aggregate Scores from C.1 – C.4, C.8 & C.10	Perception of the Completeness of EC Internal Market
12	6 – 12	Some improvement over system reliant on national rules
23	13 – 18	No significant improvement over system reliant on national rules
5	19 – 24	Many barriers removed
0	25 – 30	All barriers removed – internal market fully functioning

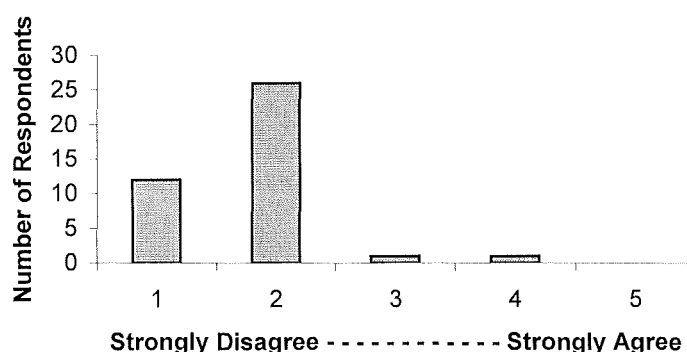
This author fully accepts that new internal market directives, whether in areas of the internal market not previously covered by directives or as some form of amendment to, or extension of, existing directives are likely to impose more stringent technical

requirements on products than previously existed for those products. Such tightening of technical requirements is entirely consistent with public expectations of improvement in public protection.

Given the emphasis, in the UK at least, on de-regulation generally and European Community programs such as SLIM (Simpler Legislation for the Internal Market)(Commission, 1996) internal market practitioners could reasonably expect to find that, technical requirements excepted, new directives be no less easy to understand and apply than earlier directives. Administrative burdens of new internal market directives should be clearer and be no more onerous than those of earlier directives. Internal market practitioners' perceptions of problems associated with the introduction, after EC adoption and national transposition, of new directives was assessed and the results of this assessment are shown in the following Figures and Table.

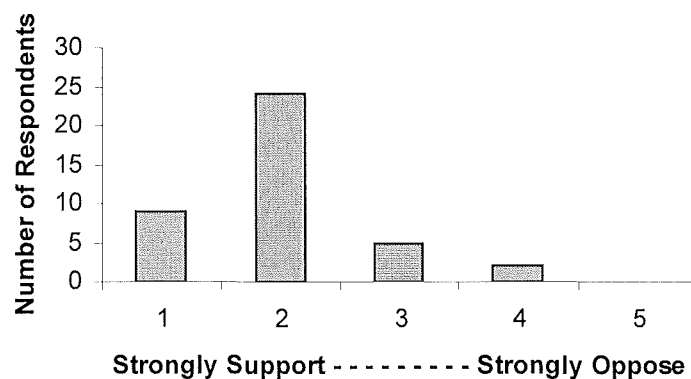
The results summarised in Figure 5.11 suggest that 95% of practitioners would agree that new directives cause them some sort of problem as they become law. New Approach directives typically have three main aspects to them: the Articles which describe the legal basis, some background, a statement of any necessary repeals and statements about coming into force; a definition of the essential requirements that must be fulfilled by products falling within the scope of the directive and finally the methods by which conformity with the directive shall be demonstrated. It was with these three aspects in mind, each of which can cause quite different problems for internal market

**Figure 5.11 Response to requests for opinion of the statement 'The introduction of new, or modified directives, never provides any problems.'**



practitioners, that Questions C.6 and C.6.1 were put to respondents. The results shown in Figure 5.12 show that more than 80% of respondents supported the suggestion that some aspects of new directives are more difficult for them to deal with than other aspects. The data of Table 5.19 now provides some clarification as to which aspects of directives are seen as problematical. It can be seen that no one aspect has emerged as clearly the most difficult aspect to deal with.

**Figure 5.12 Response to requests for opinion of the statement 'Some aspects of EC internal market new approach technical harmonization directives are more difficult to deal with than others.'**



What is pointed to, by the comments relating to identification of those parts of the essential requirements that apply to any given product, is the value of standards in general and to the sub-set of harmonised standards. Harmonised product standards have the particular benefit of including within them informative annexes showing the links between the clauses of the standard and the appropriate parts of applicable directives. A difficulty that arises is that work on harmonised standards only begins following a mandate from the Commission to the appropriate European standardisation body and this mandate is not generated until after directives are formally adopted. The time taken to prepare standards in response to Commission mandates often means that published standards do not exist until well after the time that the application of a directive becomes mandatory.

The problems associated with the transition period following the adoption of a directive generally fall into either of two categories. In any given Member State there is a need



**Table 5.19 Summary of comments made by respondents when asked to identify the difficult aspects of directives**

<b>Number of Responses</b>	<b>Comment</b>
11	Essential requirements - understanding application to specific products
9	Transition – what rules apply when in period before directive becomes mandatory
8	Conformity assessment for any given product
8	Generally difficult to understand

for clarity in the definition of the requirements of the new regime including when the new regime may be invoked by a manufacturer and when it becomes mandatory for manufacturers. There is no synchronisation between Member States on transition arrangements and as a result confusion across the internal market can exist about what is acceptable. The lack of synchronisation in transposition is exacerbated by the effects of the transposition deficit already discussed in some detail in Section 3.2.1

The comments of the last two rows of Table 5.19 may be, to some extent at least, related. If practitioners are unable to fully understand the entirety of a directive then they may experience difficulty in determining where their products fit in the overall scheme of the directive and thus not be able to clearly identify the necessary conformity assessment procedures. Given that there may be difficulties in the general understanding of directives then the level of help available to practitioners may become an issue. One other comment was made by 10 respondents. This comment is not really one of the aspects of the directive itself and so is not included in Table 5.20, instead it is related to the interpretation of the requirements of directives by officials. This concern was expressed in terms of differences of interpretation between Member States and also in the lack of clarity in replies when questions were asked of officials in the UK.

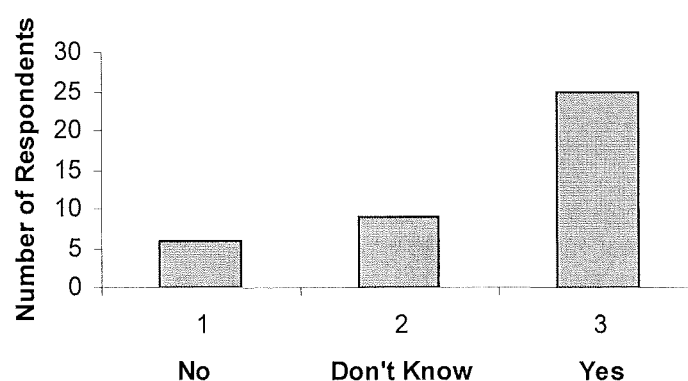
This would suggest that the data of Table 5.19 divides into two distinct categories. The first category contains essentially manufacturers' problems. Initially their problems are concerned with identifying the various hazards that their product poses and then in marrying up these identified hazards with the requirements of the appropriate directives. For existing classes of products harmonised standards may be of benefit to manufacturers. For innovative manufacturers, leaders in their sectors of manufacturing,

any difficulty in identifying the hazards of their product and dealing with them to meet the objectives of the essential requirements of directives is part of the price of market leadership. This first category also includes conformity assessment because it is primarily the manufacturer who makes the decisions on hazards and then the appropriate conformity assessment regime to deal with the identified hazards. There may be subsequent problems with other groups of internal market practitioners if manufacturers do not adequately make their case for the actions that they have taken. Adequately trained practitioners, in all internal market practitioner roles, would assist in minimising these problems.

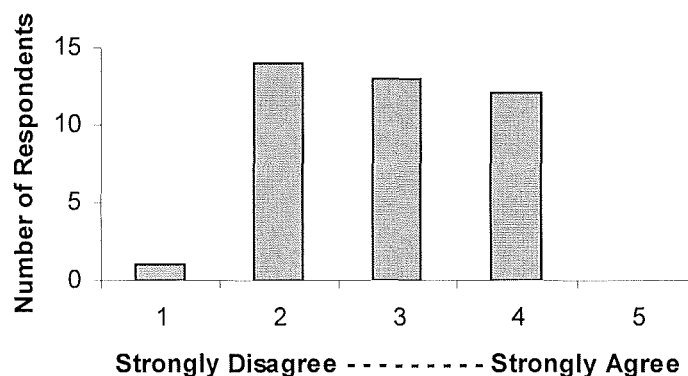
The second category of data identified in Table 5.19, covering transition and general understanding, is really beyond the control of practitioners. The solutions here depend on the Member States abiding by the rules of the internal market and for the European Community and Member State drafters of legislation to provide clarity in their texts.

The data of Figure 5.13 strongly suggests that the views expressed by respondents are valid for several directives, i.e it is not a view generated by experience of one directive only. The results in Figure 5.14, which relate to opinions about relative simplicity of technical legislation, are of some concern. These results cannot be interpreted to suggest that the consensus view is that more recent directives are simpler than earlier directives. A legitimate alternative interpretation is that no significant simplification of directives has been noticed by internal market practitioners, this despite the introduction of SLIM (Commission, 1996).

**Figure 5.13** Response to the question 'In your experience are the difficult aspects that you have just described similar from one directive to another directive?'



**Figure 5.14 Response to requests for opinion of the statement ‘More recent EC internal market technical legislation is simpler than earlier EC internal market technical legislation.’**

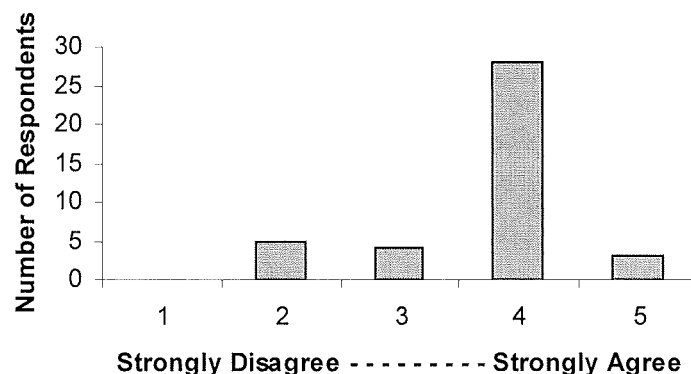


A result of the use of directives for the establishment of the EC internal market is the expectation that transposed national laws in each of the Member States, based on each internal market directive, are the rules to which internal market practitioners work. An intention was to assess the extent to which practitioners had a need to see the transposed national law in Member States other than their own Member State. Unfortunately the lead question, Question C.9 of the Structured Interview, contained an ambiguity that was not detected at the pilot stage. This ambiguity has given rise to questionable data from which no sustainable findings can be drawn.

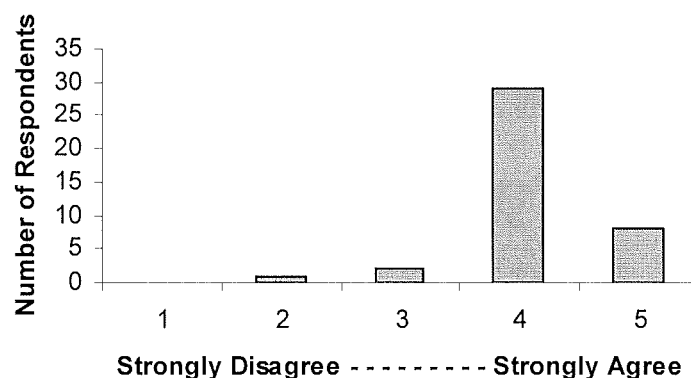
#### 5.2.1.4 Understanding of harmonised standards (Part D of Structured Interview)

The primary purpose of this part of the Structured Interview was to make an assessment of respondents' knowledge of harmonised standards, their significance and the process by which they are generated. This primary purpose was achieved via Questions D.2 – D.5, the remainder of the questions within this part provide some context for the primary responses with the first questions gauging the respondents' views on the value of standards in general. Figure 5.15 shows that 31 respondents, greater than 75%, agree that all relevant standards have value and from Figure 5.16 it can be seen that 37 respondents, greater than 90%, agree that European standards are of value in relation to New Approach technical harmonisation directives. Twenty five respondents, 62.5%, claim to 'often' or 'always' use available harmonised standards and 27 respondents, 67.5%, claim to 'often' or 'always' respond to draft standards available for public comment.

**Figure 5.15** Distribution of responses to the request for opinion of the statement 'All relevant standards are of value.'



**Figure 5.16** Distribution of responses to the request for opinion of the statement 'European standards are of value in relation to internal market new approach technical harmonisation directives.'



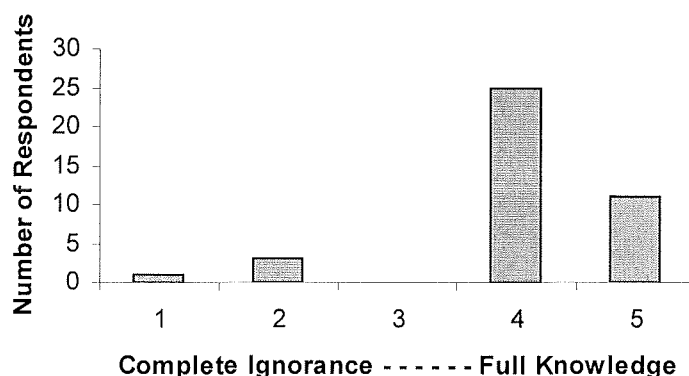
These initial results suggest that respondents have a reasonable level of contact, either directly or indirectly, with standards bodies and via this contact may have become familiar with much of the overall standards making process.

The results shown in Figures 5.15 and 5.16 also suggest that there is general support for relevant standards, particularly European standards. This general support for standards is consistent with the findings from Part C of the Structured Interview where problems with understanding the application of essential requirements of directives to specific products were identified.

Standards of great value, to manufacturers in particular, in the context of the EC internal market, are 'harmonised standards' as a result of the 'presumption of conformity' that

compliance with harmonised standards, or parts of harmonised standards, bestows on products. The results in Figure 5.17 suggest that 36 respondents, 90%, claim either partial or full knowledge of the special status of harmonised standards. The claims of knowledge were then tested, via Structured Interview Questions D.2 and D.2.1, with the results of these tests being presented in Tables 5.20, 5.21 and 5.22

**Figure 5.17 Distribution of responses to request to rate own knowledge of the special status of 'harmonised standards'**



**Table 5.20 Assessment of knowledge of respondents claiming full knowledge of the special status of harmonised standards**

Number of Respondents	Validity of claim to full knowledge
8	Correctly identified presumption of conformity
3	Failed to identify presumption of conformity
11	TOTAL in this category

**Table 5.21 Assessment of knowledge of respondents claiming partial knowledge of the special status of harmonised standards**

Number of Respondents	Validity of claim to partial knowledge
9	Correctly identified presumption of conformity
10	Correct as far as they went but did not identify presumption of conformity
6	Made incorrect statements
25	TOTAL in this category

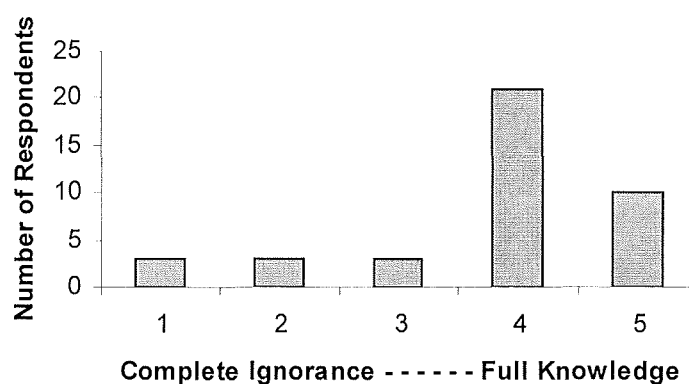
**Table 5.22** Aggregate assessment of knowledge of respondents claiming full or partial knowledge of the special status of harmonised standards

Number of Respondents	Independent assessment of respondents' self-assessment
17	Correctly identified the presumption of conformity
10	Claimed and demonstrated partial knowledge
9	Over assessed their own knowledge
36	TOTAL

Earlier findings suggest that problems with understanding the application of essential requirements of directives to specific products exist. General support was expressed for standards and European standards. From the data of Table 5.22, it can be seen that only 17 respondents, 42.5%, correctly identified that harmonised standards provided presumption of conformity for products to directives.

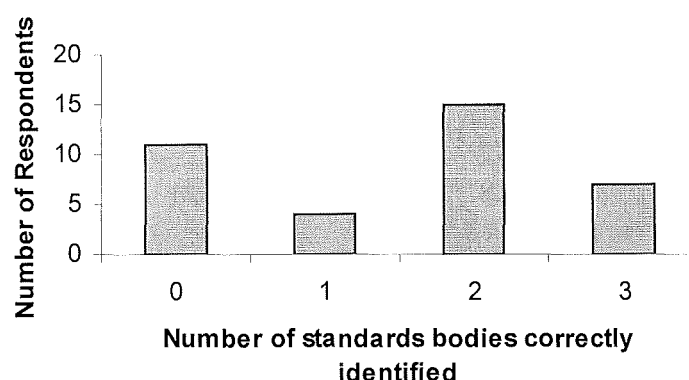
Further investigation of respondents' knowledge of the process by which harmonised standards are prepared was undertaken. A respondent's self-assessment of which standards bodies are authorised to prepare harmonised standards was first requested, Question D.3 This was then followed by a test that involved a request for identification of the appropriate standards bodies, Question D.4. The data obtained is presented in Figures 5.18 and 5.19 and tends to confirm respondents' self over assessment of knowledge identified earlier. Table 5.23 allows assessment of the data in a rather different manner and shows that ETSI, the telecommunications standards body, is less well known than Cenelec, the electrical standards body and CEN the standards body for non-electrical standards.

**Figure 5.18** Distribution of responses to request to rate own knowledge of which standards bodies are authorised to prepare harmonised standards



The final strand of the assessment of knowledge related to harmonised standards looked at process knowledge, first by asking about how the European standards bodies are authorised to prepare candidate harmonised standards and then of the overall process for standards to become harmonised standards, Questions D.5.1 and D.10.1. This data is

**Figure 5.19** Distribution of number of correctly identified standards bodies for those respondents claiming more than 'Complete Ignorance' of which standards bodies are authorised to prepare harmonised standards

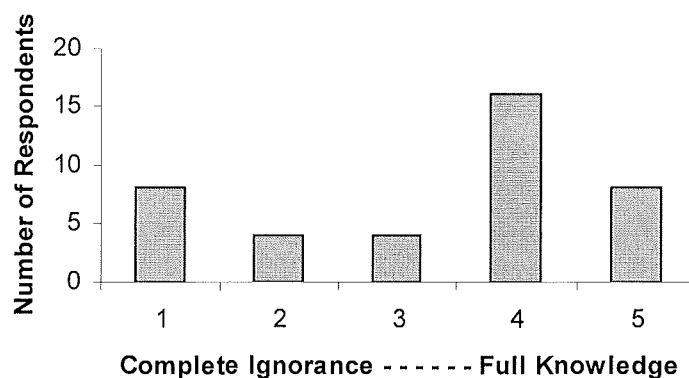


**Table 5.23** The number of times each of the standards bodies who may prepare harmonised standards was identified

Number of Respondents	Name of Standards Body
26	CEN
22	CENELEC
7	ETSI

presented in Figure 5.20 and 5.21 and in Tables 5.24 and 5.25. Only 13 respondents, 32.5%, were able to correctly identify the source of authority for the production of harmonised standards and only 9 respondents, 22.5%, were able to identify the basic process steps in the production of harmonised standards.

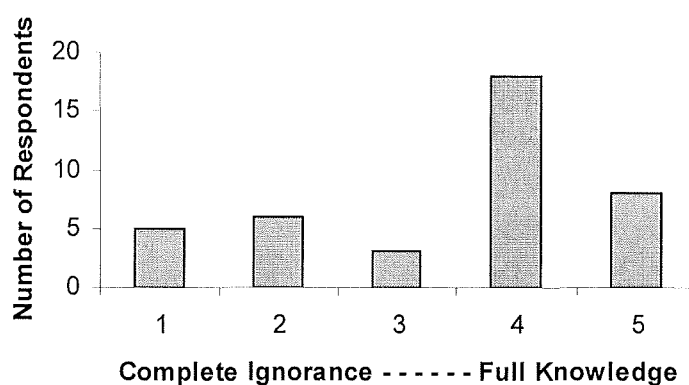
**Figure 5.20** Distribution of responses to request to rate own knowledge of how the standards bodies authorised to prepare harmonised standards obtain this authority



**Table 5.24** Assessment of knowledge of respondents claiming full or partial knowledge of how the standards bodies authorised to prepare harmonised standards obtain their authority to do the work

Number of Respondents	Independent assessment of respondents' self-assessment
13	Correctly identified the source of authority
10	Claimed and demonstrated partial knowledge
1	Over assessed their own knowledge
24	TOTAL

**Figure 5.21** Distribution of responses to request to rate own knowledge of the process by which a standard can attain the special status of harmonised standard





**Table 5.25 Aggregate assessment of knowledge of respondents claiming full or partial knowledge of the process by which a European standard can attain the special status of harmonised standard**

<b>Number of Respondents</b>	<b>Independent assessment of respondents' self-assessment</b>
9	Correctly identified the process steps
11	Claimed and demonstrated partial knowledge
6	Over assessed their own knowledge
26	TOTAL

The open question, D.11, at the end of Part D, allowed for respondents to put forward other views on harmonised standards not already covered. Four respondents each made a significant comment:

i) There is a need to stress that whilst harmonised standards are one way of demonstrating compliance with directives they are not, in general, the only way to demonstrate compliance although special rules do apply for the Electromagnetic Compatibility Directive<sup>3</sup> and for the Construction Products Directive<sup>4</sup>.

ii) There is a need for easily accessible published process flowcharts.

(Discussed in Section 3.3.1)

iii) Difficulty in determining which standards are harmonised standards.

(This data is available via:

[www.europa.eu.int/comm/enterprise/newapproach/standardization/harmstds/reflist.html](http://www.europa.eu.int/comm/enterprise/newapproach/standardization/harmstds/reflist.html) )

iv) Not all harmonised standards are sufficiently convincing to demonstrate compliance – this was an enforcer's view that fundamentally challenges the 'presumption of conformity' provided by compliance with a harmonised standard.

The view expressed in iv) above is of course a legitimately held and expressed view. The standards making process, via national and European standards bodies, is a transparent process that is open to all and is subject to a number of 'quality' checks.

<sup>3</sup> Council directive of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility (89/336/EEC), OJ 1989 L 139/19-22

<sup>4</sup> Council directive of 21 December 1989 on the approximation of the laws of the Member States relating to construction products (89/106/EEC), OJ 1989 L 40/12-26

That an individual enforcement officer felt strongly enough about this perceived deficiency, in some standards, to make this comment helps to understand how it is that there is a perception that the enforcement regime shows variation, Figure 5.9

The questions that provided the data within this section have not provided, indeed were not intended to provide, complete and detailed information on the knowledge of respondents relating to harmonised standards. Nevertheless the data does suggest that, despite widespread recognition for the role that standards can play in supporting EC internal market directives, the general level of knowledge of the status of harmonised standards and of the standards making process is not high. Without a good understanding of the benefits of standardisation, together with a good knowledge of the process of standardisation, then engagement with the process to maximise the benefits of the process output, standards and harmonised standards, is likely to be impaired.

#### 5.2.1.5 Suggestions for improvements to the process (Part E of Structured Interview)

This section of the Structured Interview was included in an effort to encourage respondents to make a positive contribution for change for the better. Thirty one respondents, 77.5%, indicated that they had suggestions for improvement to the process. From these 31 respondents 47 comments were received. The seven most frequent responses, covering 40 of the responses, are listed in Table 5.26

The remaining seven comments were each made by only one respondent. With the exception of one comment, suggesting that all existing internal market legislation should be repealed and done again and better, the comments were somewhat petulant responses to what had clearly been isolated problems rather than offering genuine system improvements.

The first item in Table 5.26 provides some confirmation of the earlier finding that practitioners are not well informed about the overall internal market legislative process. The only official high level process information currently available is that provided in the treaties and this information has already been shown to lack determinism. Unofficial sources of process information, provided by other commentators, should be

viewed with caution since they are at best an interpretation that has no legal standing and for which no one can be held to account. The views expressed by respondents about the need for written guidance on the process reinforces the finding, Section 3.5.2, that the EC internal market technical legislative process would benefit from being within an accredited quality management system so that it is both deterministic and enforced.

The second item in Table 5.26 may be considered to be related to the first item in that if there was a well defined and operated process then the need for early, wide ranging, consultation could be made a mandatory requirement. This view expressed by internal market practitioners, together with the suggestion in the third item of Table 5.26, *'that there should be better access to and dissemination of information at all stages of the process.'* is entirely consistent with Proposal 8 of the Molitor Report (1995)

**Table 5.26 Responses to a request to suggest process improvements**

<b>Number of Respondents</b>	<b>Suggestion for improvement</b>
11	Written guidance on the process should be available
8	The drafters of legislative change proposals should encourage an early input from all interested parties
7	There should be better access to and dissemination of information at all stages in the process
4	Ways to speed up the process should be found
4	Objectives of the proposed legislation should be clearer
3	Formal training in the process should be available for all, particularly the drafters
3	The number of languages used should be reduced – would help to speed up the process

discussed in Section 3.3.1 The data of Table 5.26 was obtained from respondents before they were asked the following question (E.2) 'What would your opinion be if all users of EC internal market technical legislation (Enforcers, manufacturers, consumer groups etc.) were to be given active roles in the technical legislative change process?' Thirty three respondents, 82.5%, supported or strongly supported the notion of such involvement, a finding corroborating the view expressed in response to the more open question.

It would be unreasonable for the Commission, as legislation drafters, to be expected to consult directly with all potentially interested individuals. Thus some form of tiered

consultation becomes necessary. Such tiered consultations already take place, via Member States with their industry at large and at the same time via European employers and trade associations. This author's professional experience suggests that there are two major drawbacks to the tiered consultation routes as described. First, at the very early stages the consultation tends not to go right the way through the chain and is dealt with at the entry points into the Member States and European organisations. The effect is that practitioners in general fail to get to know that a particular proposal is being worked on and their views are not sought. The second problem, occurring later in the process when the entire consultation chain is exercised, is the loss of clarity in, and dilution of, the input as it goes back up through the chain. Associated with the dilution of input is the added problem that it is now later in the process so that significant change in response to external inputs has become less likely.

The third item in Table 5.26 is, to a certain extent, a reflection on respondents' own failure to access existing, open, databases. The European Union Pre-Lex database, accessible via [www.europa.eu.int](http://www.europa.eu.int), is an excellent source of information on legislative proposals as they move forward. The drawback of Pre-Lex is that it does not contain data on any early, informal drafts within the Commission, it only starts with an official draft and access to the database is much easier when an official document number is identified. It is of course a 'pull' system so that practitioners wanting to track progress on any given proposal have to either access the system themselves, and on many occasions expect to find no change in status. Alternatively they may rely on a trade association or other organisation to perform this task for them and for the trade association to report on change.

The remaining topics identified in Table 5.26 will not be discussed in detail here except to note that the desire to speed up the process is not entirely compatible with extensive early consultation.

Within Chapter 3, Sections 3.2.2.3 and 3.3, attention was drawn to the possibility of using regulations rather than directives for internal market legislation. Question E.3 asked respondents if they understood the difference between EC directives and EC regulations. Only 16 respondents, 40%, claimed to understand the difference, and when tested only 12 demonstrated correct knowledge of the difference. Of the 12 respondents who had demonstrated correct knowledge of the difference between EC

directives and EC regulations 8 respondents, 75%, agreed or strongly agreed that the EC internal market would be achieved more completely if the technical harmonisation was in the form of EC regulations rather than EC directives.

The finding that, of internal market practitioners who understand the difference between EC directives and EC regulations, 75% agree with the proposition that the EC internal market would be achieved more completely if the technical harmonisation was in the form of EC regulations rather than EC directives could be seen as a serious indictment of the process choice made and embodied within the treaties. Debate on the appropriate legislative mechanism for the internal market has already been held by the Economic and Social Committee but no changes have been made up to and including those changes introduced by the Treaty of Nice<sup>5</sup>. Future Inter-Governmental Conferences set up to review the treaties may find it necessary to deal with this issue since enlargement, with the present internal market legislative framework of directives, can only lead in the direction of more, rather than less, diversity in transposed legislation – counter productive to a true internal market.

It is recognised within this research that simply suggesting that EC internal market directives should be replaced by regulations risks insufficient attention being paid to some important issues that would have to be addressed if such a change were contemplated. Among the important issues to consider would be the process to be used for making the internal market regulations and how the Member States could continue to exercise their prerogatives for enforcement methods and penalties for infringements.

The final question in Part E provided respondents with an opportunity to offer suggestions as to how enforcement information on EC internal market directives could be made more generally available. Twenty nine respondents, almost 75%, availed themselves of the opportunity to offer suggestions, those suggestions put forward are summarised in Table 5.28

At present EC internal market directives, for example the Explosive Atmospheres

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<sup>5</sup> Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [Treaty of Nice], OJ 2001 C 80/1-87

directive<sup>6</sup> and the Machinery directive<sup>7</sup>, require copies of the transpositions of directives to be submitted to the Commission. This author's professional experiences of obtaining copies of transpositions of directives from the Commission have not proved successful. It is almost as though the Commission sees such information only as input data for transposition tracking and statistics, not as information that may be made available for dissemination to enquirers.

**Table 5.27 Responses to a request to suggest ways to improve availability of enforcement information**

<b>Number of Respondents</b>	<b>Suggestion for improvement to availability of enforcement information</b>
17	Use a website, or internet, to access the information
10	Use of a centralised administration point, but no mention was made of the internet for access
1	Use an intranet for enforcers only
1	Use Newsletters as BSI do

Each of the first two entries of Table 5.27 are, in effect, suggesting the establishment of a central collection point and differ only in the means of subsequent access to this data. With the technology, such as the Europa website, already available to the Commission, the means, but perhaps not the will, exists to provide an accessible database of transposed directives. At present there are no requirements in directives for Member States to provide to the Commission the text of transposed directives in any language(s) other than each Member State's own official language(s). This highlights again the ongoing problem of official languages and overall language diversity within the European Union.

Of the last two entries in Table 5.27 the first suggests a disturbing, parochial, view of an enforcer and the final entry again suggests confusion between legislation and standards – BSI's 'push' system of dissemination only works because it can identify its whole target base.

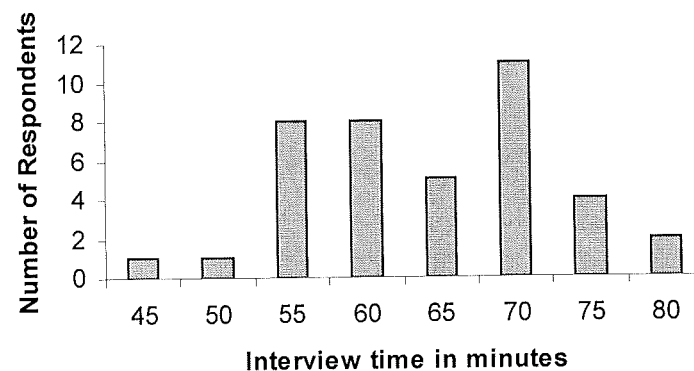
<sup>6</sup> Directive 94/9/EC of the European Parliament and the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres[ATEX directive], OJ 1994 L 100/1-29

<sup>7</sup> Directive 98/37/EC of the European Parliament and of Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery, OJ 1998 L 207/1-46

### 5.2.1.6 Structured Interview times

The target interview time was 60 minutes. Figure 5.22 shows the distribution of actual interview times, rounded up to the nearest five minutes. From Figure 5.22 it can be determined that the Mean and Median interview times were 65 and 70 minutes respectively. Even though the target time was exceeded on 22 occasions (55%) this did not appear to cause any undue problems to the respondents beyond the two for whom the interview was terminated at the end of Section E.

**Figure 5.22 Distribution of actual Structured Interview times**



## 5.2.2 TESTS OF THE SYSTEM

The most significant of the system tests was that made via the European Ombudsman. Appendix V contains a summary of the case as provided in the European Ombudsman's decision letter. This test shows that, provided that the European Ombudsman's well-defined, easily accessible straightforward conditions and rules are adhered to, an individual citizen can have a complaint of maladministration against a European Union institution investigated by the European Ombudsman. In this instance the complaint was against the Commission whose response to the European Ombudsman was both undated and un-attributed. Given that the European Ombudsman contacted the Commission President it was reasonable to infer that the reply was with the Commission President's authority, such a response by the Commission suggests a measure of disregard not just for a private citizen but also for the office of the European Ombudsman. This straightforward case took twelve months to be resolved, suggesting

that appeals to the European Ombudsman cannot be used as a corrective measure, as part of the real time process, if EC institutions are thought to be guilty of maladministration during the internal market technical legislative process.

The author's original complaint was upheld and the European Ombudsman issued a 'critical remark'. No one was held to account and there was no specific requirement imposed upon the Commission for corrective action to be taken, the case was closed. A systems failure had been identified but those with authority and who could do something positive to improve the situation failed to demonstrate an interest in system improvement. An accredited ISO 9001 (ISO, 2000) quality management system embracing the Commission would have required, via Clauses 7.2.1 and 8.1, account to be taken of the European Ombudsman's comments. There is now some prospect that system improvements may accrue from the European Ombudsman's investigations. In his report for the year 2001 the European Ombudsman (2002), states that from the beginning of 2002 he would start to follow up on critical remarks issued to any institution. This proposed action has been endorsed by the European Parliament (European Parliament, 2002).

Possible improvement in the way the overall system operates derives from the existence of the 'EU Code of Good Administrative Behaviour' (European Ombudsman, 2000). This code was adopted by the European Parliament (EP, 2002) for its own use, and at the same time called upon the European Ombudsman to apply it.

Article 192<sup>8</sup> bestows upon the European Parliament power to call on the Commission to propose a new law. An email enquiry was sent to the European Parliament's office in London in an attempt to determine if the Commission had agreed to act in the particular case of the European Parliament's request related to the 'EU Code of Good Administrative Behaviour'. The reply from Furness, a parliamentary librarian, stated: *'It [The Commission] had not done so in this instance.'* Such a failure to act by the Commission suggests that the EC inter-institutional balance of power remains with the Commission. At face value Article 192 (op. cit.) appears to give powers to the European Parliament to require action by the Commission. For ease of reference the relevant extract of Article 192 is provided:

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<sup>8</sup> N.1 above



*Article 192 (Extract)*

*The European Parliament may, acting by a majority of its Members, request the Commission to submit any appropriate proposal on matters which it considers that a Community act is required for the purpose of implementing this Treaty.*

There appears to be no obligation on the Commission to act positively, and to draw up a proposal as requested. The Commission is free to refuse to act, thereby maintaining tight control of the process.

In the 'Foreword' to his annual report for 2002 the European Ombudsman (2003) noted that of approximately 11000 complaints so far received by the European Ombudsman, since the office of European Ombudsman was established in 1995, only 3300 fell within its mandate. From the 3300 cases investigated only something in excess of 200 investigations have given rise to the issue of 'critical remarks'. The Foreword continues '*... one must remember that every case has a preventative effect, paving the way for a better procedure ...*' In the annual report for 2002 the European Ombudsman (op. cit.) has not identified any results of follow up actions to critical remarks he has issued. It is too early to make any assessment as to whether faith in '*...paving the way for a better procedure ...*' is justified. Similarly no reports on follow up actions to critical remarks are to be found in the European Ombudsman's report for the year 2003 (European Ombudsman, 2004). The reason(s) for the failure to include reports on follow up actions is as yet unclear. On the assumption that success with follow up actions would have been reported it is, at least tentatively, concluded that an initiative with such promise has foundered.

Other tests of the system made during the period of this research included 36 requests to various EC institutions. The majority of these requests were uncontroversial. The main exception being a request for clarification of language provision, discussed in Section 2.2.4 At the commencement of the research a somewhat arbitrary decision was made to consider that any request to a European Community institution that failed to receive some form of acknowledgement within three months of the request being made would be considered as a failure by that institution. Of the 36 requests made only 15 (41%) received satisfactory replies, 4 (11%) received replies that were essentially irrelevant to the question posed and the remaining 17 (42%) failed to elicit any form of

acknowledgement from the institution. Overall these results do not suggest a European Community institutional infrastructure content to deal directly with citizens of the European Union.

### 5.2.3 PARTICIPANT OBSERVATION

The individuals present in the forums described in Section 4.3.3 can, for the purposes of this research, be divided into two basic categories; those with a purely industrial interest and those with some form of legislative authority at either national government or European Community level.

For those individuals with the industrial interest, this included non-UK nationals, the findings of their knowledge and perception of the internal market were in broad agreement with the fieldwork findings reported in Section 5.2.2. Knowledge of the European Community institutions involved in the internal market technical legislative process was at best uncertain as was their knowledge of the interactions between these institutions. These individuals experienced difficulty in identifying what actions could, and perhaps should, be taken to maximise the contribution from their input to the system. It was often possible to detect a *laissez-faire* attitude based on low expectations of ability to change, or make a contribution to change of, any part of the legislative proposals. The low expectations appeared, in part at least, to be related to a perception that the internal market, as it then stood, had made little difference – manufactured products were still being customised for some of the European Community Member States to meet the requirements of local regulations. This general attitude from industry is consistent with a statement made by the Commission (2002b) that: *‘Almost one in five of Swedish companies encounter barriers to trade. 85% choose to get round the problems by modifying their products to comply with the rules in the receiving country.’* It is possible that the lack of detailed knowledge of the internal market inhibits manufacturers from challenging the local requirements that can cause distortions of the European Community internal market.

For those individuals with legislative authority it was rather more difficult to formulate judgements about knowledge and perception of the internal market and its process. The overriding, but not universal, impression gained was that as legislators they worked on

the basis that they had a free hand to impose their conditions on the situation. There was at best reluctance to recognise the existence and authority of a framework of secondary legislation<sup>9,10</sup> that determines how European Community internal market secondary legislation should be formulated. Some of this group were openly antagonistic towards the principles of the new approach to technical harmonization being applied in the field of legal metrology. The defence put forward was that legal metrology was somehow different, the general philosophy of the new approach should not, indeed could not, apply. When such views were challenged, for professional reasons, by requesting an audit trail to the exclusion of legal metrology from the Council Resolution on the New Approach to technical harmonisation<sup>11</sup> there were no reasoned responses. Under the circumstances it was not possible to make sustainable judgements on the level of knowledge of the overall process or perception of the completeness of the internal market. A significant number of those with legislative authority appeared to look forward to the adoption of the Measuring Instruments Directive<sup>12</sup> as a means of unifying control, rather than as a means of enhancing trade between Member States, one of the objectives of the internal market.

Unifying legal metrological control is of course a legitimate aim but New Approach internal market directives using Article 95<sup>13</sup> as their legal basis have as their purpose harmonisation of the rules for 'placing on the market'. An internal market directive is an inappropriate vehicle for 'in use' controls even if the subject equipment itself is under legal metrological control. Support for the inclusion of inappropriate controls within Article 95 (op. cit.) directives provides some evidence of lack of appreciation of, or disregard for, the rules governing EC internal market technical legislation.

### 5.3 Findings in relation to research aim

Within this Section explanations and/or links will be provided for each of the supporting objectives of the aim of the research, set out in full in Section 1.3.1

<sup>9</sup> Council Resolution of 7 May 1985 on a new approach to technical harmonization and standards, OJ 1985 C 136/1-9

<sup>10</sup> Council Decision of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonization directives (93/465/EEC), OJ 1993 L 220/23-39

<sup>11</sup> N.9 above

<sup>12</sup> Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring instruments (Measuring Instruments Directive), OJ 2004 L 135/1-80

<sup>13</sup> N.1 above

Objective 1, Section 1.3.1, was: *'To critically investigate the EC internal market technical legislative process.'* This objective has been addressed by supporting activities a, b, c, d and e identified in Section 1.3.2.

The first supporting activity 'a', Section 1.3.2, was to: *'Identify the EU institutions that are involved in the drafting of EC internal market technical legislation, and to establish the authorities of these institutions, then to identify any functions in support of the technical legislation. Identification of the appropriate European Union institutions provides a focus for the remainder of the research.'* This has been achieved in full within Chapter 2 'The law making process' and the associated Appendix I 'Chronological list of European Union and Economic Community major legislative events.' The information contained within the identified Chapter and Appendix provided the basis against which any process deficiencies, and knowledge deficiencies, could be assessed.

The second supporting activity 'b', Section 1.3.2, was to: *'Identify the existing process descriptions of the EU institutions involved in the drafting of EC internal market technical legislation and of the functions in support of technical legislation'.* Chapter 2, and its associated Appendix I, identify Articles 95, 250 and 251 of the Consolidated Version of the Treaty Establishing the European Community<sup>14</sup>, as the top level process description for the generation of European Community internal market technical legislation. At the next level down in the hierarchy there exists a set of Rules of Procedures for the EC institutions, for those EC institutions involved in the EC internal market technical legislative process. These Rules of Procedure are summarised in Table 3.2, from there it can be seen that these Rules of Procedure are publicly available via websites. It was found, via the Commission Rules of Procedure, that the information that is likely to be of greatest value to internal market practitioners is only to be annexed to their Rules (Article 25). No links to these expected Annexes have been found and for practical purposes they are not in the domain of internal market practitioners – this of course is based on the premise that they have in fact been produced.

Also in existence are a number of other documents intended to determine a set of working rules for the preparation of EC internal market technical legislation. These

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<sup>14</sup> N.1 above

documents include a Council Resolution on a new approach to technical harmonization and standards<sup>15</sup>, the Modules Decision<sup>16</sup> concerning the modules for the various phases of the conformity assessment procedures that are intended to be used in the technical harmonization directives and a Council Resolution<sup>17</sup> on the quality of drafting of Community legislation. These documents are clearly in the public domain.

The third supporting activity 'c', Section 1.3.2, was to: *'Identify the routes by which the groups most directly affected by any EC internal market technical legislation (Member State governments, manufacturing industry and Member State enforcement agencies) may interface with the institutions and functions identified in supporting activities a & b'*. Within the overall structure of the European Union, and for the European Community internal market in particular, the Commission is the institution that initiates legislative change. However, no specific mechanism for determining in which part of the legislative framework the next legislative change will take place has been identified.

Field intelligence relating to the EC internal market is clearly available to the Commission from its various contacts with Member State officials and other organisations. If, and when, this field intelligence provides sufficient pressure for action to be taken by the Commission it is they who, acting under the powers bestowed upon them by Article 211<sup>18</sup>, prepare draft legislation. This draft legislation should then be subjected to the processes defined in Articles 95, 250 and 251 (op. cit.). The progress of legislative proposals through the major steps of the process are available for public inspection via the Pre-Lex website. Evidence has been provided in Chapter 3 that the process steps and their associated timescales are not necessarily taken by the various European Union institutions to be binding on them.

Further evidence of a lack of adherence to timescales determined within the Treaty (op. cit.) is available in regard to the second reading of the draft Measuring Instruments Directive (Commission, 2000). Receipt of 'Common Position' was recorded by the European Parliament on 4 September 2003 and according to the provisions of Article 251(2)<sup>19</sup> there is then a three month period for the European Parliament to respond.

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<sup>15</sup> N.9 above

<sup>16</sup> N.10 above

<sup>17</sup> Council Resolution of 8 June 1993 on the quality of drafting of Community legislation, OJ 1993 C 166/1

<sup>18</sup> N.1 above

<sup>19</sup> N.1 above

Failure to respond within the three month period is deemed to represent European Parliament acceptance of the common position. In my professional capacity this author had been invited to attend a second reading hearing on the MID to be chaired by the rapporteur of the European Parliament Committee on Industry, External Trade, Research and Energy at the European Parliament in Brussels. The rapporteur had already made it clear that the European Parliament will be submitting further proposed amendments on the MID common position to the Council and to the Commission, these amendments were scheduled to be submitted 18<sup>th</sup> December 2003 – beyond the three month deadline set within Article 251(2) but within the one month extension to this period allowed by Article 251(7).

Non-judicial functions in support of EC internal market technical legislation exist in two modes. The first of these two modes is at the Member State level, where there exists a requirement that the European Community internal market technical legislation be transposed into national laws, both accurately and within defined time constraints. The publication of the European Community internal market law, in the form of directives by the Official Journal of the European Union, acts as the formal interface between the European Community and the individual Member States to initiate the individual transposition processes. Article 249 (op. cit.) includes the following extract that defines a directive in the following terms: *'A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.'* Given the preceding definition there can be no precise interface between the European Community as an entity and the constituent Member States about the process of transposition – other than the requirement that it be performed in an accurate and timely manner. Section 3.5.2 discusses in some detail failures of the transposition process.

The second mode of non-judicial function in support of EC internal market technical legislation is in the provision of supporting standards. There are in existence European standards bodies, bodies that are not part of the infrastructure of the European Union but, nevertheless, work closely with the European Union. These standards bodies prepare and publish standards covering a wide range of activities. Directive 98/34/EC<sup>20</sup> makes a general provision for specified European standards bodies, CEN, CENELEC

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<sup>20</sup> Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ 1998 L 204/37-48

and ETSI, to prepare and publish standards specifically in support of EC internal market technical legislation. This work is initiated when specific mandates from the Commission are received and subsequently accepted by the relevant European standards body. After acceptance of a mandate then work to prepare standards proceeds according to the normal processes and procedures of the European standards body. There is, however, an additional intervention by a 'Consultant'. For any given standard this consultant acts on behalf of the Commission to ensure that the quality of the standard is sufficiently high so that the Commission may deem that compliance with the standard carries with it a 'presumption of conformity' with the relevant parts of directives. Standards meeting the necessary quality and accepted by this procedure are referred to as 'harmonised standards' and obtain this important status when references to the standards are published in the Official Journal. Access to lists of harmonised standards for both legislators and internal market practitioners are available from: <http://europa.eu.int/comm/enterprise/newapproach/standardization/harmstds/reflist.html>

The ability of internal market practitioners to affect the overall EC internal market legislative process is very much a function of which specific group within the overall group of internal market practitioners they belong. The earlier in any overall process that views are expressed, and justified, the more likely it is that they will be acted upon.

In the context of change in EC internal market legislation the very early part of the process appears to be essentially internal to the Commission, but with external contacts to individuals and organisations that the Commission already has knowledge of and familiarity with. Member State views are therefore likely to be heard early in the process. Some other organisations with permanent representatives, either their own staff or some professional lobbying group, based in Brussels may also become aware of the commencement of the legislative process. This may provide these organisations with an opportunity to make early input into the process. For other EC internal market practitioners, unable to support any direct permanent representation in Brussels, their initial knowledge of proposals for change may come too late to allow them to have any significant effect on the outcome of the process. It is of course easy to be critical on behalf of internal market practitioners about this part of the process but the solution(s) to the problem of access and influence are not simple.

In effect there are at present two routes to involve internal market practitioners in the legislative process, Part E of the fieldwork indicated that 82.5% of internal market practitioners would support or strongly support active participation in the process. The first of these routes is via Member State governments, but here there are immediate questions about how Member State governments can interface with the whole of industry. For well financed, and/or well recognised, established sectors of industry, the interface to national government can be a well managed process. However for less well financed sectors of industry, possibly start up technologies, the process is less well managed and exclusions, which may appear to be deliberate, can occur. Similar difficulties can be seen to arise when the second route, via trade associations rather than Member State governments, is examined. Not all companies are members of trade associations, and even within the UK not all trade associations are affiliated to European groupings that are recognised by the Commission as potential consultees.

As companies are born, change strategic direction and even go out of existence, it is not reasonable to expect the Commission, Member State governments or European based trade organisations to be aware of the needs of the multitude of companies that exist. Any inability of the Commission, or any other organisation to track all of the legislative needs of the companies, or other groups of internal market practitioners, should not automatically be seen as a failure by the Commission. Even if the Commission was aware of each and every company or other group of internal market practitioners and distributed enquiries to determine their areas of legislative interest the response rate to such enquiries is likely to be substantially less than 100%. An important finding of this research is its failure to identify any mechanism that allows easy public access to some form of directory of all legislative proposals that are at an embryo stage. Even if such a directory existed it would of course be of limited value unless its presence could be made very widely known, this would be true even if the data was made available on a reliable website.

Involvement of internal market practitioners in the legislative process after the very early stages becomes more of an option for them as a result of the tracking available via Pre-Lex. However the ability to use the available information and to feed constructive comments into the overall process is clearly limited by the lack of process knowledge demonstrated by internal market practitioners, reported in Section 5.2.1.2



The fourth supporting activity 'd', Section 1.3.2, in support of objective 1, was to:

*'Where practical, apply tests to the EC internal market technical legislative process to determine if the actual process follows its description and if the process is accessible to those outside of the EU institutions.'* This activity was successfully fulfilled and is reported in Sections 5.2.1.2 and 5.2.1.3

Objective 2 of Section 1.3.1: *'To investigate the knowledge and perceptions of the internal market held by EC internal market practitioners.'* has been achieved by the fieldwork via the application of a Structured Interview to a sample of the UK population of EC internal market practitioners and the data is presented in Sections 5.2.1.2 and 5.2.1.3

Objective 3 of Section 1.3.1 was: *'To investigate the role of European harmonised standards in the application of EC internal market technical legislation.'* Section 5.2.3.4 summarises the extent to which internal market practitioners understand and support the concept of publicly available standards in general and harmonised standards in particular. The level of understanding of the value of harmonised standards in demonstrating conformity with EC internal market directives was considerably less than had been anticipated.

The extent of participation by internal market practitioners in the generation of harmonised standards is very much at their option. Directive 98/34/EC (op. cit.) defines those processes of CEN, CENELEC and ETSI which may culminate in the existence of harmonised standards – these processes being equally open to all groups of internal market practitioners. Importantly, within directive 98/34/EC (op. cit.) no enabling provisions are made for the use of other processes that might lead to the provision of other classes of documents that might have a similar status to that of harmonised standards – the legal presumption of conformity of products with directives when the requirements of harmonised standards can be shown to have been met. It is of concern that various of the EC institutions involved with the drafting of EC internal market technical legislation are circumventing the provisions of directive 98/34/EC (op. cit.). The Measuring Instruments Directive<sup>21</sup> establishes an alternative route by which a presumption of conformity can be achieved. This alternative process will rely on documents that, like standards, will be publicly available, but the documents will be

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<sup>21</sup> N.12 above

established by processes, unlike those for generating standards, that are not open to all groups of internal market practitioners. This could be seen as a regression back to the methodology for the preparation of common market directives that existed prior to the introduction of new approach directives in 1985<sup>22</sup>. Within this earlier methodology only legislators were involved in the preparation of the technical specifications. It is to be hoped that the adoption of the MID does not mark the beginning of a regressive trend in the establishment of technical specifications in support of EC internal market directives.

The second part of the aim, Section 1.3.1, was, through supporting activities 'b' and 'e' of Section 1.3.2: *'To put forward possible improvements to the current process'*. The first of these supporting activities 'b' identified the existing process thereby enabling an assessment of its operation. The second of these supporting activities 'e': *Investigate methods of improving the processes of the EU institutions involved with the drafting of EC internal market technical legislation* has been achieved through a study of the literature and through fieldwork based on the findings from activity 'b'.

At almost all stages through this research difficulties were experienced as a result of what were considered to be legitimate expectations not being met. These expectations related to actions of individuals and/or organisations deviating from defined processes or from processes being poorly specified. Various examples have been identified within this text but for clarity two of the examples will be re-stated here. For the first example it is unclear what should occur when the Commission legitimately exercises its powers under Article 250<sup>23</sup>, there should be no lack of determinism in this process. The second example is the failure of the Commission to perform a simple act of publication within a determined timescale, the subject of this author's complaint to the European Ombudsman and described in full within Section 5.2.2. Based on these two typical examples of process failures it would seem reasonable to assume that what processes do exist within the overall European Union organisational machinery are not well controlled.

A case can be made that the European Union processes should all be within a well controlled quality management system – a system subject to regular internal and

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<sup>22</sup> N.9 above

<sup>23</sup> N.1 above

external audits. It is recognised that there may be difficulties of accreditation and sanctions against the management of the quality system should it fail its audits. Without a strong, predictable, management system in place there seems little prospect that the potential for the European Community internal market to develop fairly, and to its full potential will be realised. It is yet to be seen what effect the enlargement of the European Community in 2004 to 25 Member States will have on systems that are already not working well. At present it would seem that the European Ombudsman's commitment (European Ombudsman, 2003) to follow up criticisms of maladministration is the best hope for process improvement. This process is limited in that it is only intended to apply to areas where someone has taken the trouble to register a formal complaint of maladministration against a European Union institution and has had the complaint upheld. The definition of maladministration, as agreed between the European Ombudsman and the Commission (European Ombudsman, 2003) is quite narrow so even the follow up procedures currently promised by the European Ombudsman leaves large sections of the overall European Community processes without external audits. The prospect of the European Ombudsman operating in such a way approaches Majone's (2000) concept of an agency with authority for rulemaking and taking binding decisions as discussed in Section 3.3.1. On the basis that 'great oaks from little acorns grow' hopes must be kept alive that the European Ombudsman's endeavours bear fruit.

Additionally a variety of opportunities to test the overall system of internal market legislative change arose during the period of this research and these opportunities were exercised. The information obtained from these tests is reported in Section 5.2.2

## 5.4 Summary

References have been made to the lack of accredited quality management systems in the European Community institutions. In an analysis of the need for, or the effectiveness of, quality management systems it is first necessary to understand the type of organisation under discussion. Private sector organisations, and some specialist functions within government, may be required by some external agent to operate within an accredited quality management system. This requirement may derive from the regulatory environment, as in the case of organisations manufacturing certain products to European Community new approach directives. The existence of such a quality

management system to fulfil a regulatory need makes the quality management system an order qualifier (Hill, 1993) for entry into the market place. Even where regulatory needs for a quality management system do not exist potential purchasers may require potential suppliers to have an accredited quality management system such that the accredited quality management system becomes an order qualifier albeit now as a business requirement (Burgess, 2002).

Many public organisations, including regulators such as: the EC institutions as a system, Member State national government and Member State local government, operate in non-market environments (Downs, 1965) in which the concept of an accredited quality management system as an order qualifier does not exist. Product quality, in this case for regulations, is not a process driver because the products, regulations, are not entered into a competitive market place. A free market is commonly seen as a method of maintaining quality and simultaneously keeping costs down, such an environment is not an appropriate model for the regulatory framework of the EC internal market. Without the pressure of an accredited quality management system as an order qualifier the EC institutions, both individually and as a system, require some other incentive to operate within a product quality and quality improvement structure.

Section 5.3 demonstrates the extent to which the aim of this research has been fulfilled through its supporting objectives. The main failure of the research is in relation to supporting objective 1. No method has been identified by which internal market practitioners can acquaint themselves with some form of directory of all legislative proposals that are at the very early stages of their development, that is before there are documents that appear on the Pre-Lex database. An ability to tap into such a directory and enhance opportunities to make an early input into the internal market technical legislative process would satisfy some of the criticisms by internal market practitioners and would help to improve the overall quality of internal market technical legislation.

A number of issues within the overall EC internal market technical legislative process are identified in Sections 3.5, 5.2 and 5.3 and some of these arise in a variety of contexts; clarity of text, languages and lack of process control are examples. The various views on these issues are drawn together in Chapter 6.

## Chapter 6 Conclusions

### 6.1 Introduction

The original impetus for this research arose from, and the current context of this research remains, the difficulties perceived by this author, himself an internal market practitioner, in dealing with the European Community internal market for goods. On the assumption that the concept of an EC internal market is to remain in force it is suggested that it is in the interests of the European Community as a whole that the internal market develops to its maximum potential as rapidly as possible. It is further suggested that the achievement of these objectives requires that the development of its necessary legislative framework should take place through the use of well designed and controlled processes and to make maximum possible use of all available resources.

To contribute to the successful development of the internal market this thesis presents a critical review of the processes that are currently in place to create the EC internal market technical legislative framework. The collection of data by fieldwork has enabled an assessment of the knowledge and perceptions of the internal market held by internal market practitioners.

This Chapter sets out the conclusions drawn from the research findings. These conclusions are then refined in terms of the research problem and the identification of specific weaknesses. Limitations on the conclusions are then discussed prior to the delineation of 'Recommendations'. The recommendations are intended to assist an improvement in the functioning of the EC internal market technical legislative process and of the internal market for goods. The inclusion of recommendations specific to internal market practitioners suggests that this research has found that it would not be reasonable to lay at the doors of legislators and enforcers all of the responsibility for the perceived difficulties.

The thesis proceeds to set out 'Suggestions for further work' each of which, if implemented, would tend to reduce the limitations. The research project is completed by a brief summary.

## 6.2 Conclusions from the research findings

To provide structure to the presentation of the conclusions this Section uses a 'top down' approach starting with conclusions about the top-level processes of the treaties, the second level of involvement by the EC institutions through to internal market practitioners and the trade/professional press.

### 6.2.1 TOP LEVEL PROCESSES

As the first step in developing conclusions from this research it is useful to go back to basics and to understand the target for the European Community internal market. The current target for the EC internal market was established by Article 13 of the Single European Act (1987)<sup>1</sup> that inserted Article 8a into the European Economic Community Treaty (1972)<sup>2</sup>. The target is re-stated as Article 14 of the Consolidated Version of the Treaty Establishing the European Community (2002)<sup>3</sup>, for ease of reference Article 14 is reproduced below in full:

#### *Article 14*

- 1. The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 15, 26, 47(2), 49, 80, 93 and 95 and without prejudice to the other provisions of this Treaty.*
- 2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.*
- 3. The Council, acting by a qualified majority on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.*

From the above it can be seen that Article 14(1) required that the objectives set out in Article 14(2) be achieved by 31 December 1992. Any judgement about the completion of the internal market can only be made satisfactorily if there is first a clear understanding of the end point – how should Article 14(2) be interpreted? In trying to answer this question it is instructive to take a wider look at the Treaty (op. cit.) to

<sup>1</sup> Single European Act, OJ 1987 L 169/1-29

<sup>2</sup> Treaty establishing the European Economic Community [Treaty of Rome], HMSO, London (this is Cmnd. 4864 that reproduces, in English, the text of the Treaty as originally published in 1957)

<sup>3</sup> Consolidated Version of the Treaty Establishing the European Community, OJ 2002 C 325/33-184

determine if it generally exhibits clarity. Evidence has been presented, in Section 2.2.4.3 on languages and in Section 3.3.1, with reference to the effect of Article 250 (op. cit.), which suggests that the Treaty lacks both clarity and determinism. Further evidence on lack of clarity presents itself in the Treaty (op. cit.) in that there are 32 references to the 'common market' and 18 references to the 'internal market' – are these really the same concept within the treaties? Based on the above examples there must be some doubt about the interpretation of Article 14(2) (op. cit.) in deciding if the internal market is complete.

The evidence presented in this research suggests that the internal market is not yet complete. The Commission (2003) admits to a non-zero and rising transposition deficit and the measuring instruments directive, first proposed in 1991 (Commission, 1991), and more recently proposed in 2000 (Commission, 2000), has only recently been adopted<sup>4</sup>. The perception of the internal market held by internal market practitioners as reported in Section 5.2.3.3 further suggests that the internal market is not yet complete and therefore the requirement of Article 14(2)<sup>5</sup> remains unfulfilled. More than a decade after the planned completion date for the internal market this finding suggests that the processes of legislative change have not yet provided an adequate legislative framework within which the internal market may function fully. However, this research was initiated to provide a critical review of the EC internal market technical legislative process and the conclusions from this critical review may help to explain why the internal market is seen as not yet complete.

The reference point for this research has been the Consolidated Version of the Treaty Establishing the European Community (op. cit.). This research recognises that the treaties deal with a number of subject areas, only one of which is the EC internal market. Chapter 2, therefore, was focussed on the law making process for the EC internal market. This procedure, described in Article 251 and colloquially known as the codecision procedure, has been described as of Byzantine complexity (Usher, 1998) yet within this complexity it fails to make reference to another Article that directly affects the process it describes. Article 250 allows the Commission, under defined circumstances, to interrupt the process flow as described by Article 251 but fails to define what the subsequent process shall be. This non-deterministic perturbation of the

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<sup>4</sup> Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring instruments, OJ 2004 L 135/1-80

<sup>5</sup> N.3 above

process is a possibility for all areas of activity where Article 251 is the controlling process. For EC internal market technical legislation relating to the free movement of goods then Articles 251 and Article 250, together, still do not fully define the process since Article 95 requires a consultation with the Economic and Social Committee. Whilst this additional consultation is a process step beyond what is specified in Article 251 it at least has the benefit of being deterministic. Because of the unspecified effect on Article 251 by Article 250 it is reasonable to conclude that the Article 251 process is not deterministic.

It would seem reasonable to expect that the set of languages that citizens may use to communicate with the EU institutions and the set of 'official languages and working languages' would be the same, so that the institutions' translation services would have one clear definition of what is required of them. As demonstrated in Section 2.2.4.3, these two sets of language are different. A difference of only one language between these two sets of language may not seem very great but the underlying cause of this difference is important.

Article 314 (op. cit.) specifies twelve languages for which there are authentic copies of the treaties<sup>6</sup>. Article 21 (ex Article 8d) was modified, by Article 2(11) of the Treaty of Amsterdam<sup>7</sup>, to link citizens' rights to use the twelve languages specified in Article 314 when communicating with the institutions. This change clearly requires the institutions to have competence in twelve languages and has been introduced in a way that appears to have taken no account of the authority that has existed via Article 217 of the Treaty of Rome<sup>8</sup>. This authority, re-affirmed by Article 290 of the Consolidated Version of the Treaty Establishing the European Community<sup>9</sup>, provides for Council to determine the official languages and working languages of the European Community. Council's determination of the official languages and working languages<sup>10</sup> lists only eleven languages. The drafters of the treaties have created a situation where, with apparent equal authority, two separate mechanisms exist where each of these mechanisms can determine the number of languages with which the institutions are required to have

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<sup>6</sup> Section 2.2.4 explains the effect on languages of the May 2004 EU expansion.

<sup>7</sup> Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, OJ 1997 C 340/33-184

<sup>8</sup> N.2 above

<sup>9</sup> N.3 above

<sup>10</sup> Decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union (95/1/EC, Euratom, ECSC) OJ 1995 L 1/1-13



competence. While this example exhibits neither lack of clarity nor lack of determinism it is evidence of poor quality drafting that can lead to confusion.

The processes of drafting amendments to the controlling treaties establishing the European Union and the Economic Community remain, to this author, unknown. It has not been an objective of this research to study these processes. Almost by accident the output from the processes, the treaties that establish the rules for use lower down the hierarchy, have been shown to lack clarity and determinism and to possess duality that can lead to confusion. This is an important finding because the treaties are at the pinnacle of the hierarchy of the processes and procedures that exist to control the generation of EC internal market technical legislation. From the top of the hierarchical structure of the EU and EC the message about acceptable levels of quality could be more positive. Those further down the hierarchy do not have the power, even if they have the will, to correct any fundamental errors and deficiencies.

It is accepted that for some activities of the European Union, for example activities associated with the second and third pillars (Roney, 1998) some intentional lack of precision in the treaties may be an advantage. However, for the treaties to exhibit the characteristics described where the treaties define the top level of a legislative process is, at best, unhelpful and suggests that the processes involved in drafting the treaties are not well controlled.

## 6.2.2 SECOND LEVEL INVOLVEMENT

In addition to the function served by the treaties in establishing the top level procedure for the EC internal market technical legislative process the treaties described, and continue to describe<sup>11</sup>, tasks common to several institutions and some of the important functions of the individual EC institutions. Also included in the Treaty are the requirements that the EC institutions adopt their own Rules of Procedure (op. cit). Section 3.2.3 identified the relevant Rules of Procedure and discussed some shortcomings of those Rules of Procedure. It was found that in some instances there is much that is not readily accessible to the public.

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<sup>11</sup> N.3 above

With the roles of the institutions as they are it could be expected that tensions between the institutions exist. However the institutions do have shared responsibility for the final output, new European legislation. Little cooperation has been evident in setting common standards for drafting, until recent years. The first formal recognition of this need appeared in the 1993 Council Resolution on the quality of drafting of Community legislation<sup>12</sup>.

This Council Resolution was later incorporated, by reference to it, into Declaration 39 of a series of Declarations appended to the Treaty of Amsterdam<sup>13</sup>, a Declaration that was not rescinded by the Treaty of Nice<sup>14</sup>. Having been re-affirmed in this way there should be no doubt as to the continuing applicability of the Council Resolution to the EC institutions and to their officials. An extract from Clause 3 of the Council Resolution<sup>15</sup> reads: ... *the same term shall be used throughout to express the same concept*; The earlier discussions on the common market, single market and internal market suggest that no real regard is paid by EC institutions to rules that are intended to govern their behaviour. Since 1993 the EC institutions, and the treaty drafters, have been obliged to use the same term for what is sometimes referred to as the internal market.

Evidence of the continuing failure of the Council to comply with Article 249<sup>16</sup> treaty provisions for the issue of Council decisions, by not addressing its decisions, was provided in Section 5.2.1.1 Further evidence of failure to comply with treaty provisions was advanced, Section 3.2.2.3, in relation to the Economic and Social Committee that has taken upon itself a re-naming to be the European Economic and Social Committee, a change not provided for by the Treaty. The exercise of the European Ombudsman's complaint system, reported in Section 4.3.2.4, demonstrates how the Commission too does not always show due regard for obligations legitimately placed upon them by other authorities.

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<sup>12</sup> Council Resolution of 8 June 1993 on the quality of drafting of Community legislation, OJ 1993 C 166/1

<sup>13</sup> N.7 above

<sup>14</sup> Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, OJ 2001 C 80/1-87

<sup>15</sup> N.12 above

<sup>16</sup> N.3 above

With the evidence demonstrating that the EC institutions have some apparent disregard for the treaties it is not clear how external observers such as EC internal market practitioners are expected to know when any EC institution, or its officials, are operating *ultra vires* and perhaps should be challenged to justify their behaviour.

The results reported in Table 5.26 show that 27.5 % of respondents to the structured interview offered the opinion that written guidance on the EC internal market technical legislative process would be an improvement that they would welcome. Guidance on a process that lacks determinism as a result of unauthorised deviations would, however, be of limited value.

No evidence has been found to counter the evidence suggesting that the processes of the EC institutions are non-deterministic and at times *ultra vires*. Optimists might point to the European Ombudsman's intention (European Ombudsman, 2003), endorsed by the European Parliament, to follow up on those findings where a 'critical remark' was issued as evidence of process improvements to come. It is not yet possible to tell if the European Ombudsman and the European Parliament have the will, and authority, to force change for the better in the application of the EC institutions' systems. In the interim those EC internal market practitioners who may wish to engage with the legislative process should expect to deal with each proposal that they encounter in a reactive rather than proactive manner because predictions of how the process will unravel cannot be precise.

### 6.2.3 STRATEGIC MANAGEMENT OF THE EUROPEAN COMMUNITY INTERNAL MARKET

Before looking at the strategic management of the EC it is helpful to understand where some problems for manufacturers arise. For ease of reference for this discussion Article 14(2)<sup>17</sup> is reproduced below:

*The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.*

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<sup>17</sup> N.3 above

From the perspective of EC internal market practitioners in general, and for manufacturers in particular, is the definition of the EC internal market provided by Article 14(2) both necessary and sufficient to create an internal market? This author would suggest that it is certainly a necessary condition but is not sufficient to create a genuine internal market. For simple goods such as ordinary wood/lead pencils Article 14(2) is necessary and sufficient in that a manufacturer may move quantities of pencils within the internal market and when finally purchased by an end user the pencils may be used.

For more complex goods, petrol pumps are a useful example, the right of unhindered movement across the EU exists as for other types of goods. However problems may be encountered in some Member States when it comes to installing and using the equipment because local regulations, legitimately in place under the provisions of Article 30 (op. cit.), prevent the use of the equipment, thereby negating the benefit of free movement. It has been shown that Article 14(2), while necessary for an internal market, is insufficient to create a true internal market. Manufacturers are then left with the dilemma of manufacturing different models for different Member States, which is not the intention of the internal market, or producing one model to the most stringent Member State requirements thus raising prices unnecessarily in some Member States. An intention of a unified market, the internal market, was to keep prices down.

In the case of petrol pumps, discussed in the preceding paragraph, regulations in place in some Member States for Stage II Vapour Recovery, as discussed in Section 3.3.1, have a significant negative influence on the internal market. Here the problem was not initiated by the Member States but created by the Commission who, after some years of attempting to prepare a Stage II Vapour Recovery directive, declared that the local pollution problems associated with Stage II Vapour Recovery should be dealt with under the provisions of 'subsidiarity'. Under the provisions of subsidiarity the individual Member States are free to choose if any legislation is required and, if so, then also to choose what would be in the legislation.

Section 3.3.1 also noted the potential negative influence of individual Member State social legislation, such as the UK's Disability Discrimination Act<sup>18</sup> on the EC internal market.

In the foregoing it has been argued that Article 14(2), while a necessary condition for an EC internal market, is insufficient on its own to create an EC internal market. Each of Article 30 and the application of the principle of subsidiarity by the Commission may have effects contrary to the effective creation of the internal market.

Manufacturers are obliged to work within the existing framework of legislation and it has been shown that this framework of legislation can cause a distortion, or fragmentation, of what is supposed to be one internal market. The strategy for the successful operation of the internal market thus appears to be one of relying on the skills of manufacturers to be aware of the needs of each Member State and of making available a basket of products to meet these needs. This apparent strategy is somewhat different from the expected strategy of legislation specifically designed to create a 'lowest possible cost, one product fits all' internal market.

#### 6.2.4 MANAGEMENT OF EUROPEAN COMMUNITY AFFAIRS BY THE COMMISSION

Within this Section reviews of four different aspects of the management of European Community affairs are discussed.

##### 6.2.4.1 Distortion of the internal market

The EC internal market is a construct that has been agreed by the signatories of the treaties. The current Treaty<sup>19</sup> maintains the previously established role of the Commission as the custodian of the treaties and of the collegiate nature of the Commissioners. The Treaty does not go on to define the internal working organisation of the Commission, this remains for the Commission to determine. Thus any criticisms of the internal organisational structure of the Commission are legitimately directed at the Commissioners rather than at the Treaty.

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<sup>18</sup> Disability Discrimination Act 1995

<sup>19</sup> N.3 above

Within Section 5.2.2 concerns were raised about the organisational structure within the Commission that provides for a Directorate General 'Enterprise' and a Directorate General 'Internal market', each responsible to different Commissioners, rather than an organisational structure with one Commissioner responsible for all aspects of the internal market. This concern is reinforced by information from the europa/Pre-lex website indicating that DG Health and DG Budget were consulted about the draft Measuring Instruments Directive (Commission, 2000) prepared by DG Enterprise but DG Internal market was not consulted.

Accidental distortion of the internal market can occur as a result of social legislation, as discussed in Section 6.2.3. Expected cooperative links between Directorates General, for example from 'Enterprise' to 'Internal market', can be shown not to exist. There is, therefore, no reason to expect that robust links from other Directorates General to invite DG Internal market to vet proposals in non internal market legislative areas for possible effects on the internal market will exist. This research has been unable to identify any evidence of a robust system within the Commission intended to ensure that accidental distortions of the internal market are prevented – a requirement of Article 3(1)(g)(*op. cit.*) which requires '*a system ensuring that competition in the internal market is not distorted*'.

#### 6.2.4.2 Transposition deficit

The failure of the Commission to act more positively to deal with the transposition deficit together with the acceptance of a non-zero transposition deficit target was seen as an indictment of the management of the internal market by the Commission. It is accepted that the situation regarding acceptable levels of transposition deficit might be confused by pronouncements from European Council meetings but it was shown in Section 5.2.2 that the Commission has the obligation, and powers, via Article 211 and Article 226 to uphold the Treaty (*op. cit.*) by instigating enforcement proceedings against Member States via the Court of Justice.

Article 213 of the Treaty requires the Commission members to be of '*... general competence and whose independence is beyond doubt.*' and to be '*... completely independent in the performance of their duties.*' Despite this supposed independence

the management of Commission affairs appears to be affected by what is best described as political interference by Council.

#### 6.2.4.3 Other enforcement action

Article 211 (op. cit.) includes the requirement that the Commission shall: '*ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied*'. In Section 2.3.3.2 it was shown that Council repeatedly fails to comply with the requirements of Article 249 (op. cit.) by not addressing all of its decisions. No evidence has been found of the Commission taking action against the Council for this series of failures. On the basis of this lack of evidence the Commission appears to be guilty of failing in their role of maintaining the provisions of the Treaty.

#### 6.2.4.4 Notification

Within Sections 3.3.1 and 5.2.2 there was discussion of the 'notification' system, a system designed to mitigate against the effects on the internal market of Member State national laws. Two deficiencies of this system were identified. The first arises from those Member State officials with some direct responsibility for the internal market not acting as they should. The second arises from a lack of knowledge of the notification system or lack of appreciation that Member State social or environmental legislation might distort the internal market. Even if Member State social or environmental legislation were notified to the Commission its possible distorting effects on the internal market might go unnoticed.

### 6.2.5 ACTIVITIES OF THOSE OUTSIDE OF THE EUROPEAN COMMUNITY INSTITUTIONS

Within this Section the activities of sections of the community outside of the European Community institutions are assessed for their involvement with the overall process.

#### 6.2.5.1 Internal market practitioners

The research findings on the overall knowledge and perceptions held by EC internal market practitioners about the EC internal market and its legislative process are reported in detail in Section 5.2.3 Overall these findings suggest that EC internal market

practitioners are not well informed about the process and are, therefore, ill equipped to maximise their input to the process. Given that the findings shown in Figure 5.10 suggest that the perception of EC internal market practitioners is that the EC internal market is very far from complete then perhaps more input from this group of practitioners could assist in the improvement of the functioning of the internal market.

The data of Table 5.4 suggests that 'working with colleagues' is a significant training method for EC internal market practitioners. This, coupled with the overall finding that EC internal market practitioners are not well informed about the legislative process, suggest that the next generation of EC internal market practitioners may show little improvement over their mentors in knowledge of the legislative process.

The concept of harmonised standards to underpin EC internal market technical legislation was brought about as a means to allow the legislation to become broader based, objective setting and hence easier to agree within the EC institutions. Thereafter standards bodies such as CEN, with open access for all internal market practitioners via their Member State national standards body, would prepare harmonised standards restricted to individual products or families of products. The level of support for standards in general and harmonised standards in particular, see Figures 5.15 and 5.16, was encouraging. However, less than 50% of respondents were fully aware of the 'presumption of conformity' afforded by compliance with harmonised standards.

#### 6.2.5.2 The trade press

The findings in relation to information on the EC internal market published by the trade press are reported in Section 5.2.2. Sufficient erroneous information was reported to suggest that EC internal market practitioners should be cautious in relying on uncorroborated statements obtained from the trade press.

### 6.3 Conclusions about the research problem

The research problem, fully described in Section 1.2, arose from the formalisation of concerns that had been developing as this author was undertaking his normal professional activities as an EC internal market practitioner.



From this research project it is reasonable to conclude that there are problems with the European Community internal market legislative process and with the current degree of completeness of the European Community internal market. The problems appear to arise in three main areas; the top level process description, the management of the process and the knowledge and understanding of the European Community internal market possessed by EC internal market practitioners. Within this framework a number of specific weaknesses can be itemised:

1. Lack of clarity and determinism in the process as defined in the Treaty.
2. Failure of the Commission to effectively enforce the Treaty against recalcitrant Member States and European Community institutions.
3. Inappropriate management structure of, and control by, the Commission and Member States that allows the introduction of measures having negative influences on the European Community internal market.
4. Failure of the Commission to make readily available for public access its lower level process information.
5. Inadequate engagement with the European Community internal market technical legislative process by European Community internal market practitioners.

## 6.4 Limitations

This research, while complete in itself, must be put into context. In particular there are two limitations on the conclusions. The first concerns the fieldwork sample. This was restricted to UK European Community internal market practitioners. The results from this sample may not be typical of similar samples drawn from other Member States where training programs in support of professionals who become internal market practitioners may be different, leading to different levels of knowledge. Also the characteristic attitude of other Member State citizens towards the European Community in general may have an effect on the attitude of their EC internal market practitioners' perception of the completeness of the internal market. The second limitation relates to the findings about the clarity and determinism of the Treaty (op. cit.). This research has been limited to a study of the legislation establishing the EC internal market for goods, albeit this involved a broader review of the Treaty to investigate language provisions within the European Union. This research has not provided any evidence to directly suggest that other parts of the Treaty suffer from the same lack of clarity and

determinism as identified in relation to the internal market and language. However the process deficiency identified by the possible interference of Article 250 (op. cit) with the Article 251 process will be common to other areas of the Treaty that invoke the Article 251 process.

Possible ways to lift the limitations described above are offered in Section 6.5 'Recommendations' and in Section 6.6 'Suggestions for further work'.

## 6.5 Recommendations

Within the body of the text some criticisms have been levelled at other commentators for identifying problems with the EC internal market legislative change process but failing to offer sufficient specific suggestions for improvement. Within the following Sections a number of specific recommendations are made to different groups of people in a manner intended to bring about improvement to the European Community internal market technical legislative process, to the process output (new approach internal market directives) and to other groups for their general improvement.

### 6.5.1 TO EUROPEAN COMMUNITY AND MEMBER STATE LEGISLATORS

1. Those parts of the Consolidated Version of the Treaty Establishing the European Community which delineate procedures, or may affect procedures, should be reviewed thoroughly with a view to proposing amendments to improve clarity and determinism. Consider the use of alternative methodologies for conveying process information. (Section 5.2.1.1)
2. Introduce effective quality management systems, based on ISO 9000, into the European Community institutions, possibly based on an accreditation from, and continuing auditing by, the European Ombudsman. (Section 5.2.4)
3. Review organisational structure of the Commission – with perhaps the appointment of one Commissioner with overall responsibility for all aspects of the European Community internal market. (Section 5.2.2)
4. Improve enforcement of the Treaty – this should follow automatically from the introduction of 2. above. (Section 5.2.2)
5. Review the current practice of 'directives' rather than 'regulations' for establishing the internal market and if seen as having advantages then propose any necessary amendments to the Treaty. (Section 5.2.2)

6. Establish effective systems to protect the European Community internal market from threats posed by subsidiarity, social legislation and other legislation. (Section 5.2.2)
7. Agree an improved arrangement for the use of languages within the European Community that preserves national heritage but recognises the burden of a large number of official languages and working languages. (Section 5.2.1.2)
8. Make the European Community technical legislative process more inclusive of internal market practitioners, possibly via amendments to European Community institutions' Rules of Procedure – collectively the population of internal market practitioners are a significant resource. (Section 5.2.3.5)
9. Improve stability of websites' navigation to allow internal market practitioners to become familiar with them and then to make more use of them. (Section 5.2.1.1)
10. Provide a website database of proposals being worked on at very early stages to facilitate engagement with all stages of the European Community technical legislative process by internal market practitioners. (Section 5.4)

## 6.5.2 TO INTERNAL MARKET PRACTITIONERS

1. Become better informed about the European Community internal market technical legislative process to enable more, and more informed, engagement with the process. (Section 5.2.3.2)
2. Engage with the process of European Community internal market technical legislative process as much as possible, particularly at the early stages of proposals. (Section 5.2.2)
3. Take every opportunity to make the European Community internal market technical legislative process more aware of problems that exist with the process or with its output to assist in generating improvement. (Section 5.2.3.5)

## 6.5.3 TO COMMENTATORS

1. Authors whose work appears in academic journals and books could do more to suggest changes to the Treaty to correct the underlying problems that are discussed rather than conjecturing on what might happen under the existing text. (Section 5.2.2)

2. Authors, and editors, whose work appears in the trade press should take greater care to validate the completeness and correctness of references to, and about, European Community internal market legislation. (Section 5.2.1)

#### 6.5.4 GENERAL

1. Suggest to the Confederation of British Industry and to the Institute of Directors that publication of a handbook for internal market practitioners could provide an advantage to British industry. (Section 5.2.2)
2. Introduce into UK undergraduate science/engineering courses compulsory modules on European Community internal market law. (Section 5.2.3.1)
3. Introduce into UK undergraduate science/engineering courses compulsory modules on quality management systems. (Section 5.2.3.1, by extension of argument)

### 6.6 Suggestions for further work

Within this Section six suggestions for further work are offered based on the overall findings, conclusions and limitations of this research.

1. Investigate why the Commission and internal market practitioners' views on the functioning, completeness, of the internal market are so divergent.
2. Repeat the fieldwork in other Member States to determine if the data obtained from the purposive sample used for this study is different from that of similar purposive samples in other Member States.
3. Identify the processes and procedures involved in the drafting of European Union and European Community treaties with a view to making improvements to better ensure high quality output from the processes and procedures.
4. Investigate why females were under represented in the purposive sample.
5. Investigate the effect on the European Community processes of follow up action on 'critical remarks' made by the European Ombudsman.
6. Repeat the structured interview fieldwork in the UK as part of a longitudinal study to determine if the level of knowledge of the European Community technical legislative change process and the perceptions of the functioning of the internal market among UK internal market practitioners has changed.

## 6.7 Summary

This research fully recognises that treaties are framework documents within which there may be imprecision. The Consolidated Version of the Treaty Establishing the European Community (op. cit.) provides a framework for the European Community. Within this framework some Articles, where clarity and determinism might be expected, have been shown not to sufficiently exhibit these expected characteristics. The lack of clarity and determinism within these Articles creates ambiguity in the top-level process description.

The management strategy of the Commission, with their initiating and executive role within the overall European Community institutional structure, exhibits weaknesses. It is suggested that the management strategy is not sufficiently clear and effective for maintaining and enhancing the internal market. This deficiency is of particular concern in view of the enlargement of the European Union and European Community with ten new Member States in 2004. Some of this deficiency may stem from the organisational structure of the Commission at the senior levels.

The overall level of knowledge of the EC internal market technical legislative process exhibited by EC internal market practitioners was low. This may be explained in part by EC internal market practitioners not being proactive in engaging with the process. The responsibility for the effective operation of the EC internal market should not be seen as solely a domain for officials, engagement by informed EC internal market practitioners with the officials is likely to lead to improvement. The paucity of information about the EC internal market technical legislative process in both the trade press and in academic journals does not assist internal market practitioners to improve their knowledge.

An attempt to improve on the existing European Community technical legislative process and the effectiveness of the EC internal market for the benefit of consumers and industry has been made by a series of recommendations.

## APPENDIX I

Chronological list of European Union and European Community  
major legislative events

Table AI.1 Chronological list of European Union and European Community major legislative events

Year	European Union Legislative Event	United Kingdom Legislative Event	Comment
1951	Treaty establishing European Coal and Steel Community <sup>1</sup> (ECSC) (Treaty of Paris) ECSC institutions: High Authority  Common Assembly Special Council Court of Justice  Consultative Committee		Signed 18 April 1951 – entered into force 23 July 1952. Members: Belgium, France, Germany (W), Italy, Luxembourg and the Netherlands. (Validity expired 23 July 2002 after its fifty year life)  Known as the ‘Commission’. Members appointed by the Member States. Assisted by Consultative Committee. Members delegated by the national parliaments. Known as the Council Known as the Court, members appointed by Governments of the Member States Members nominated by Member States, appointed by Council.
1957	Treaty establishing the European Economic Community <sup>2</sup> (EEC) (Treaty of Rome) EEC institutions: Assembly Council Commission Court of Justice  Economic and Social Committee		Signed 25 March 1957 – entered into force 1 January 1958 Members: Belgium, France, Germany (W), Italy, Luxembourg and the Netherlands.  Members delegated by the national parliaments Assisted by Economic and Social Committee Assisted by Economic and Social Committee Known as the Court, members appointed by Governments of the Member States Members nominated by Member States, appointed by Council.

<sup>1</sup> Treaty establishing the European Coal and Steel Community [ECSC] [Treaty of Paris], Cmnd.4863, HMSO, London, [Reproduces, in English, the text of the Treaty as originally published in 1951]

<sup>2</sup> Treaty establishing the European Economic Community [EEC] [Treaty of Rome], Cmnd.4864, HMSO, London, [Reproduces, in English, the text of the Treaty as originally published in 1957]

Year	European Union Legislative Event	United Kingdom Legislative Event	Comment
1957	Treaty establishing the European Atomic Energy Community <sup>3</sup> (Euratom) (Treaty of Rome) Euratom institutions: Assembly Council Commission Court of Justice  Economic and Social Committee <sup>4</sup>		Signed 25 March 1957 – entered into force 1 January 1958 Members: Belgium, France, Germany (W), Italy, Luxembourg and the Netherlands.  Members delegated by the national parliaments. Assisted by Economic and Social Committee Assisted by Economic and Social Committee Known as the Court, members appointed by Governments of the Member States Members nominated by Member States, appointed by Council.
1958	Council Decision <sup>4</sup>		Creation of "Official Journal of the European Communities".
1967	Merger Treaty <sup>5</sup>		Established a single Council and a single Commission for the three European Communities (ECSC, EEC and Euratom).
1972	Treaty of Accession <sup>6</sup>		Denmark, Eire, Norway and United Kingdom to become Member States of the European Communities from 1 January 1973.

<sup>3</sup> Treaty establishing the European Atomic Energy Community [Euratom], Cmnd.4865, HMSO, London, [Reproduces, in English, the text of the Treaty as originally published in 1957]

<sup>4</sup> Council decision creating the 'Official Journal of the European Communities', OJ 1958, Number 390/58, (In French)

<sup>5</sup> Treaties establishing the European Communities – treaties amending these Treaties – Documents concerning the Accession, Luxembourg: Office for Official Publications of the European Communities, pp 745-773 [Merger Treaty](English text version of OJ 1967 Number 152)

<sup>6</sup> Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands (Member States of the European Communities), the Kingdom of Denmark, Eire, the Kingdom of Norway, the United Kingdom, concerning the accession to the European Economic Community and the European Atomic Energy Community by the Kingdom of Denmark, Eire, the Kingdom of Norway, the United Kingdom, OJ 1972 L 73/5-11, (In French)



Year	European Union Legislative Event	United Kingdom Legislative Event	Comment
		European Communities Act 1972 <sup>7</sup>	Enabling legislation for the United Kingdom to join the European Communities.
1973	Adaptation Decision <sup>8</sup>		Decision of the Council adjusting the documents concerning the accession of new Member States – Norway did not join.
1976	Council Decision <sup>9</sup>		Introduction of direct universal suffrage for elections to the Assembly – effective for elections in 1979 and subsequently at five year intervals.
1978		European Assembly Elections Act 1978 <sup>10</sup>	Makes provision for the election of representatives to the Assembly of the European Communities.
1979	Treaty of Accession <sup>11</sup>		Greece to become a Member State of the European Communities from 1 January 1981.
		European Communities (Greek Accession) Act 1979 <sup>12</sup>	United Kingdom ratification of Greek accession to the European Communities.
1985	Treaty of Accession <sup>13</sup>		Spain and Portugal to become Member States of the European Communities from 1 January 1986.

<sup>7</sup> European Communities Act 1972 (1972 Chapter 68)

<sup>8</sup> Council decision of the European Communities of 1 January 1973 adjusting the instruments concerning the accession of new Member States to the European Communities, OJ 1973 L 2/1-11

<sup>9</sup> Council decision (76/787/EEC, Euratom) concerning the election of the representatives of the Assembly by direct universal suffrage, OJ 1976 L 278/1-11. [See also corrigenda OJ 1976 L 326/32]

<sup>10</sup> European Assembly Elections Act 1978 (1978 Chapter 10)

<sup>11</sup> Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Denmark, Eire, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Kingdom of Norway, the United Kingdom (Member States of the European Communities) and the Hellenic Republic concerning the accession of the Hellenic Republic to the European Economic Community and the European Atomic Energy Community, OJ 1979 L 291/9-16

<sup>12</sup> European Communities (Greek Accession) Act 1979 (1979 Chapter 57)

<sup>13</sup> Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Denmark, Eire, the French Republic, the Hellenic Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, and the United Kingdom (Member States of the European Communities) and the Kingdom of Spain and the Portuguese Republic concerning the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and the European Atomic Energy Community, OJ 1985 L 302/9-22

Year	European Union Legislative Event	United Kingdom Legislative Event	Comment
		European Communities (Spanish and Portuguese Accession) Act 1985 <sup>14</sup>	United Kingdom ratification of Spanish and Portuguese accession to the European Communities.
1986	Single European Act (SEA) <sup>15</sup> European Council		Signed 17 and 28 February 1986 – effective 1 July 1987 Heads of Government to meet twice a year. Assembly becomes European Parliament.
		European Communities (Amendment) Act 1986 <sup>16</sup>	United Kingdom ratification of the Single European Act plus miscellaneous changes.
1992	Treaty on European Union (Maastricht Treaty) (TEU) <sup>17</sup> Adds institutions: Court of Auditors Committee of the Regions		Creation of the European Union - founded on the European Communities. European Economic Community (EEC) becomes European Community (EC). Introduced Article 189b – codecision. Appointed by Council in cooperation with European Parliament. Council and Commission assisted further by the creation of this new advisory body.
1993		European Communities (Amendment) Act 1993 <sup>18</sup>	United Kingdom ratification of the Treaty on European Union.
1994	Treaty of Accession <sup>19</sup>		Austria, Finland, Norway and Sweden to become Member States of the European Union from 1 January 1995.

<sup>14</sup> European Communities (Spanish and Portuguese Accession) Act 1985 (1985 Chapter 75)

<sup>15</sup> Single European Act, OJ 1987 L 169/1-29

<sup>16</sup> European Communities (Amendment) Act 1986 (1986 Chapter 58)

<sup>17</sup> Treaty on European Union [Maastricht Treaty], OJ 1992 C 191/1-67

<sup>18</sup> European Communities (Amendment) Act 1993 (1993 Chapter 38)

<sup>19</sup> Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Denmark, Eire, the French Republic, the Hellenic Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Portuguese Republic, the Kingdom of the Netherlands, the Kingdom of Spain, and the United Kingdom (Member States of the European Communities) and the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union. OJ 1994 C 241/9-20

Year	European Union Legislative Event	United Kingdom Legislative Event	Comment
1995	Council Decision <sup>21</sup>	European Union (Accessions) Act 1994 <sup>20</sup>	United Kingdom ratification of Austrian, Finnish, Norwegian and Swedish accession to the European Communities. Decision of the Council adjusting the documents concerning the accession of new Member States – Norway did not join.
1997	Treaty of Amsterdam (ToA) <sup>22,23</sup>		Amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts. Limits European Parliament to 700 members after any further EU enlargements. Effective 1 May 1999. Also provides codified text of Treaties – Article numbers changed.
1998		European Communities (Amendment) Act 1998 <sup>24</sup>	United Kingdom ratification of the Treaty of Amsterdam.
1999		European Parliamentary Elections Act 1999 <sup>25</sup>	Introduces a form of proportional representation to the United Kingdom European parliamentary election system, effective from 1999 European Parliamentary elections.

<sup>20</sup> European Union (Accessions) Act 1994 (1994 Chapter 38)

<sup>21</sup> Decision of the Council of the European Union of 1 January 1995 adjusting the instruments concerning the accession of new Member States to the European Union (95/1/EC, Euratom, ECSC), OJ 1995 L 1/1-13

<sup>22</sup> Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [Treaty of Amsterdam], OJ 1997 C 340/1-144

<sup>23</sup> Consolidated Version of the Treaty Establishing the European Community, OJ 1997 C 340/173-308

<sup>24</sup> European Communities (Amendment) Act 1998 (1998 Chapter 21)

<sup>25</sup> European Parliamentary Elections Act 1999 (1999 Chapter 1)

Year	European Union Legislative Event	United Kingdom Legislative Event	Comment
2001	Treaty of Nice (ToN) <sup>26,27</sup>		Amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts. Limits European Parliament to 732 members after any further EU enlargements. Effective 1 February 2003
2002		European Communities (Amendment) Act 2002 <sup>28</sup>	United Kingdom ratification of the Treaty of Nice.

<sup>26</sup> Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [Treaty of Nice], OJ 2001 C 80/1-87

<sup>27</sup> Consolidated Version of the Treaty Establishing the European Community, OJ 2002 C 325/33-184

<sup>28</sup> European Communities (Amendment) Act 2002 (2002 Chapter 3)

## APPENDIX II

### The Structured Interview

**CONFIDENTIAL**

Reference Number .....

Type .....

**Research Thesis Working Title:**

European Community internal market technical  
legislation – a critical review of the processes.

Structured interview to assist in the gathering of  
data in the practical part of a research project.

T.C.Rogers  
17 May 2000  
(Revised)

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## INTRODUCTION

I am a research student at Middlesex University Business School undertaking research related to European Community internal market technical legislation. This research has been divided into two sections: a literature review and practical research that requires the gathering of information from persons closely involved with EC internal market technical legislation.

This Structured Interview is part of the information gathering process. The individual responses to the questions will remain confidential to me and to my research supervisors but they will be used in conjunction with the responses from other interviewees to help generate an overall picture. Excerpts from this interview may be made part of the final research report, but under no circumstances will your name or any identifying characteristics be included in the report.

Participation is entirely voluntary. You are free to refuse to answer any question and you are free to withdraw at any time. At any time during or after the interview you retain the right to retrospectively withdraw and for your data to be destroyed. At the end of the interview, if there are any questions that you would like to discuss further please identify them.

Are you prepared to proceed on the basis set out?                      Yes (1)                      No (2)

Are you prepared to allow me to quote, anonymously,  
brief extracts from any of your responses?                      Yes (1)                      No (2)

Date: .....

Do you wish to receive a report on  
the results of this part of the research?                      Yes (1)                      No (2)

A number of the questions in this interview require you to make a choice out of several options for your response. The different formats for these options were set out in the attachment to the introductory letter, it would be helpful if you had this attachment to hand as we go through the interview.



**Part A: To establish the identity and role of the respondent, to understand some of the respondent's background and to obtain additional information about the respondent's organisation.**

**A.1 Identification of respondent and contact details**

Name:	
Nationality:	Sex: Male (1) Female (2)
Department:	
Organisation:	
Address:	
Phone:	
Fax:	
e-mail:	
Date:	

**A.2 How would you describe your role with regard to EC internal market technical legislation?**

Legislator (1)      Some other role (2)

**A.3 How would you describe the level at which you operate?**

European      Member      Local      Some  
Community (1)      State (2)      Authority (3)      Other (4) .....  
(Multinational Corp, UK Co etc)

**A.4** If the answer to A.2 was not (1): How would you describe the role that you have with regard to EC internal market technical legislation?

Enforcer (1)    Manufacturer (2)    Other (3) .....  
(Standards, Consumer Group etc)

## **To understand some of the respondent's background**

**A.5** In what general area was your initial professional education/training?

Law (1)    Science (2)    Engineering (3)    Other (4) .....  
(Arts, languages etc)

**A.6** In your opinion should there be formal job related training for all jobs in your general class of employment?

**A**    Yes (3)    No opinion (2)    No (1)

**A.7** Looking beyond your professional background, how were you trained for your current job? Identify all that apply.

**A.7.1** Formally - courses (1)

**A.7.2** Working with colleague(s) (1)

**A.7.3** Written procedures (1)

**A.7.4** Other training (1)

**A.7.5** Not trained (1)

Comments:

**A.8** Have you received any specialist training in the understanding and/or interpretation of EC internal market technical legislation ?

**A**    Yes (3)    No opinion (2) Go to A.9    No (1) Go to A.8.2

**A.8.1** If the answer to A.8 was 'Yes': Please briefly describe the training received.

Comments:

**A.8.2** If the answer to A.8 was 'No': What would your opinion be if you were offered specialist training in the understanding and/or implementation of European Community internal market technical legislation? Where would you place yourself on the scale:

<b>C</b>	Very		Neither		Very	Not
	Pleased	Pleased	pleased nor	Displeased	Displeased	Applicable
	(5)	(4)	Displeased	(3)	(2)	(1)
						(0)

**A.8.2.1** Please comment briefly on your answer to A.8.2

Comments:

**A.9** Have you received specialist training about the European Community internal market technical legislative change **process**?

<b>A</b>	Yes (3)	No opinion (2)	Go to A.10	No (1)	Go to A.9.2

**A.9.1** If the answer to A.9 was 'Yes': How would you describe this specialist training? Where would you place yourself on the scale:

<b>D</b>	Very		Neither		Very	Not
	Helpful	Helpful	Helpful nor	Unhelpful	Unhelpful	Applicable
	(5)	(4)	Unhelpful	(3)	(2)	(1)
						(0)

**A.9.1.1** Briefly describe the specialist training:

Comments:

Go to A.10

**A.9.2** If the answer to A.9 was 'No': What would your opinion be if offered specialist training about the European Community internal market technical legislative change process? Where would you place yourself on the scale:

<b>C</b>	Very		Neither		Very	Not
	Pleased	Pleased	Pleased nor	Displeased	Displeased	Applicable
	(5)	(4)	Displeased	(2)	(1)	(0)
			(3)			

**A.9.2.1** If the answer to A.9.2 was greater than (3): Please briefly describe how you think such specialist training could be of benefit.

Comments:

### To obtain additional information about the respondent's organisation.

**A.10** How would you describe the products/services etc that your organisation deals with?

Comments:

**A.11** Which of the EC new approach technical harmonization directives can have an effect on your work?

<b>A.11.1</b> Low voltage	(1)	<b>A.11.6</b> EMC	(1)
<b>A.11.2</b> Machinery	(1)	<b>A.11.7</b> Simple Pressure	(1)
<b>A.11.3</b> ATEX	(1)	<b>A.11.8</b> NAWI	(1)
<b>A.11.4</b> Pressure Equipment	(1)	<b>A.11.9</b> Others	(1)
<b>A.11.5</b> CPD	(1)	<b>A.11.10</b> Total NATHDs	( )

List others:

Telecommunications.

New hot water boilers.

Noise emission

No reply.

Active implantable medical devices.

Personal protective equipment.

Not applicable.

**A.12** Is there any additional data about your own background or about the organisation that you work within that you consider should be taken into account in this research?

**A**

Yes (3)

No opinion (2) Go to B.1

No (1) Go to B.1

**A.12.1** What is the additional data?

Not applicable.

**Part B: To assess the respondent's basic knowledge of the European Union institutions and of the European Community internal market technical legislative change processes.**

**B.1** Within the European Union there are several separate institutions. Which of these institutions can you name?

- |  |     |                               |
|--|-----|-------------------------------|
| <b>B.1.1</b> Commission                    | (1) | <b>B.1.8</b> Other responses: |
| <b>B.1.2</b> Committee of the Regions      | (1) | .....                         |
| <b>B.1.3</b> Council                       | (1) | .....                         |
| <b>B.1.4</b> Court of Auditors             | (1) | .....                         |
| <b>B.1.5</b> Court of Justice and/or CFI   | (1) | .....                         |
| <b>B.1.6</b> Economic and Social Committee | (1) | .....                         |
| <b>B.1.7</b> European Parliament           | (1) | .....                         |

<b>B.1.9</b> Total named	( )	<b>B.1.10</b> Total correct	( )
--------------------------	-----	-----------------------------	-----

**B.2** Within the European Union there are several separate institutions that play a part in the EC internal market technical legislative process. Which of these institutions can you name?

- |  |     |                               |
|--|-----|-------------------------------|
| <b>B.2.1</b> Commission                    | (1) | <b>B.2.5</b> Other responses: |
| <b>B.2.2</b> Council                       | (1) | .....                         |
| <b>B.2.3</b> Economic and Social Committee | (1) | .....                         |
| <b>B.2.4</b> European Parliament           | (1) | .....                         |

<b>B.2.6</b> Total named	( )	<b>B.2.7</b> Total correct	( )
--------------------------	-----	----------------------------	-----

**B.3** How would you rate your knowledge of the processes by which people become members of each of the European Union institutions that play a part in the EC internal market technical legislative process? Where would you place yourself on the scale:

**G**

Full Knowledge (5)	Partial Knowledge (4)	Neither Knowledge Nor Ignorance (3)	Mainly Ignorance (2)	Complete Ignorance (1)
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**B.3.1** Commission:

**B.3.1.1** Commissioners (5) (4) (3) (2) (1)

**B.3.1.2** Officials (5) (4) (3) (2) (1)

**B.3.2** Council (5) (4) (3) (2) (1)

**B.3.3** Economic and Social Committee (5) (4) (3) (2) (1)

**B.3.4** European Parliament (5) (4) (3) (2) (1)

**B.4** For those answers to B.3.1 to B.3.4 greater than (1): Please briefly describe your understanding of the processes.

**Comments:**

**Commission**

Commissioners - candidates by MS government – approved by EP

Officials - appointed by Commission – open competition or secondment

**Council** - appropriate MS minister attends

**ESC** - candidates by MS government – appointed by Council

**EP** - directly elected – in UK by PR from 10 June 1999

Commission	Correct	Partially Correct	Incorrect	No Reply	Judgement
<b>B.4.1.1</b> Commissioners	(3)	(2)	(1)	(0)	( )
<b>B.4.1.2</b> Officials	(3)	(2)	(1)	(0)	( )
<b>B.4.2</b> Council	(3)	(2)	(1)	(0)	( )
<b>B.4.3</b> ESC	(3)	(2)	(1)	(0)	( )
<b>B.4.4</b> EP	(3)	(2)	(1)	(0)	( )

Judgement  
Self OVER assessment = '1'  
Otherwise = '0'

**B.5** What is your opinion of the statement “The EC internal market technical legislative process is a process that is formally described somewhere”? Where would you place yourself on the scale:

<b>E</b>	Strongly		Neither		Strongly
	Agree	Agree	Agree nor	Disagree	Disagree
	(5)	(4)	Disagree	(2)	(1)
			(3)		

**B.5.1** How would you rate your knowledge, in general terms at least, of the EC internal market technical legislative process within the European Community?

<b>G</b>			Neither		
	Full	Partial	Knowledge	Nor	Mainly
	Knowledge	Knowledge	Nor	Ignorance	Complete
	(5)	(4)	(3)	(2)	(1)

**B.5.2** The high level procedure of the EC internal market technical legislative process is formally described – where do you think that this formal description is to be found?

Comments: The Treaties – Article 251 (189b) <span style="float: right;">No reply <input type="checkbox"/></span>
<b>B.5.2</b> Correct (3)      Nearly correct (2)      Incorrect (1)

**B.6** When there are proposals for EC internal market technical legislative change that might affect your organisation who do you see as having responsibility to ensure that these changes are known by you?

Comments: Own responsibility <input type="checkbox"/> Don't know <input type="checkbox"/> No reply <input type="checkbox"/> Someone else – who? Trade Association, organisation's management etc. <input type="checkbox"/>
---

**B.6.1** What is the route by which you usually become aware of proposals for EC internal market technical legislative change?

Comments: MS Government. European Trade Association. National Trade Association. Other.
---



**B.6.2** When you become aware of proposals for EC internal market technical legislative change that might affect your organisation, do you attempt to make technical input with the objective to modify the proposals for change?

**B**

Always (5)	Often (4)	No opinion (3)	Rarely (2)	Never (1)
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**B.7** Briefly describe what you understand to be the opportunities to input your views about proposals for EC internal market technical legislative change, with a view to attempting to modify the proposals for change:

Comments:

Where: MS officials  
Commission officials  
ESC Member(s)  
EP Member(s)  
MS MP(s)

When: Commission working drafts  
Before Common Position  
After Common position

**B.8** How would you rate your understanding of the procedures within each of the European Union institutions that might be involved with the EC internal market technical legislative process? Where would you place yourself on the scale:

**G**

	Full Knowledge (5)	Partial Knowledge (4)	Neither Knowledge Nor Ignorance (3)	Mainly Ignorance (2)	Complete Ignorance (1)
<b>B.8.1</b> Commission	(5)	(4)	(3)	(2)	(1)
<b>B.8.2</b> Council	(5)	(4)	(3)	(2)	(1)
<b>B.8.3</b> Economic and Social Committee	(5)	(4)	(3)	(2)	(1)
<b>B.8.4</b> European Parliament	(5)	(4)	(3)	(2)	(1)

**B.9** For each of the European Union institutions in B.8.1 thru B.8.4 with the answer greater than (1): Explain what you understand the procedure is and/or explain where the procedure may be obtained.

Comments:		Correct	Partially Correct	Incorrect	No Reply	Judgement
<b>B.9.1</b>	Commission	(3)	(2)	(1)	(0)	( )
<b>B.9.2</b>	Council	(3)	(2)	(1)	(0)	( )
<b>B.9.3</b>	ESC	(3)	(2)	(1)	(0)	( )
<b>B.9.4</b>	EP	(3)	(2)	(1)	(0)	( )

Judgement  
Self OVER assessment = '1'  
Otherwise = '0'

**B.10 For European Community institution Members & Officials and Member State Officials.**

What is your opinion of the statement "Declaration 39 of the Treaty of Amsterdam (on the quality of drafting of legislation) has had a significant effect on your work of drafting EC internal market technical legislation"? Where would you place yourself on the scale:

<b>E</b>	Strongly		Neither		Strongly	Not
	Agree	Agree	Agree nor	Disagree	Disagree	Aware
	(5)	(4)	Disagree	(3)	(2)	(1)
						(0)

**B.10.1** If the answer to B.10 is greater than (1): Briefly explain the effect(s).

Comments:

**B.11** Is there any additional data concerning your knowledge of the European Union institutions and of the European Community internal market technical legislative change process that you consider should be taken into account in this research?

**A**

Yes (3)

No opinion (2) Go to C.1

No (1) Go to C.1

**B.11.1** What is the additional data?

Not applicable.

**Part C: To explore the respondent's perception of the internal market and opinion about enforcement regimes across the Member States of the European Community.**

**Product**

**C.1** In your opinion has the EC internal market achieved its objectives of removing technical barriers to trade? Where would you place yourself on the scale:

<b>H</b>	All barriers removed (5)	Most barriers removed (4)	No opinion (3)	Some barriers removed (2)	No barriers removed (1)
----------	--------------------------------	---------------------------------	----------------------	---------------------------------	-------------------------------

Comments:

**C.2** What is your opinion of the statement "EC type examination documents and manufacturers' Declarations of Conformity generated in one Member State are accepted in all other Member States without problems". Where would you place yourself on the scale:

<b>E</b>	Strongly Agree (5)	Agree (4)	Neither Agree nor Disagree (3)	Disagree (2)	Strongly Disagree (1)
----------	--------------------------	--------------	---	-----------------	-----------------------------

**C.3** What is your opinion of the statement "For any given product there are no differences of technical requirements between Member States". Where would you place yourself on the scale:

<b>E</b>	Strongly Agree (5)	Agree (4)	Neither Agree nor Disagree (3)	Disagree (2)	Strongly Disagree (1)
----------	--------------------------	--------------	---	-----------------	-----------------------------

**C.4** What is your opinion of the statement "All technical requirements for all products are covered by EC internal market technical harmonisation directives". Where would you place yourself on the scale:

<b>E</b>	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
	(5)	(4)	(3)	(2)	(1)

**C.5** What is your opinion of the statement "The introduction of new, or modified directives, never provides any problems". Where would you place yourself on the scale:

<b>E</b>	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
	(5)	(4)	(3)	(2)	(1)

**C.6** What is your opinion of the statement "Some aspects of EC internal market new approach technical harmonization directives are more difficult to deal with than others" Where would you place yourself on the scale:

<b>F</b>	Strongly Support	Support	Neither Support nor Oppose	Oppose	Strongly Oppose	
	(5)	(4)	(3)	(2)	(1)	Go to C.7

**C.6.1** If the answer to C.6 was greater than (1): Identify those difficult aspects.

Comments:	No comment <input type="checkbox"/>
Variable conformity attestation methods.	<input type="checkbox"/>
Failure to comply with drafting rules.	<input type="checkbox"/>
Difficult language – translations.	<input type="checkbox"/>
Sheer volume of words	<input type="checkbox"/>
Others:	<input type="checkbox"/>
	<input type="checkbox"/>
Go to C.6.2	<input type="checkbox"/>

**C.6.2** In your experience are the difficult aspects that you have just described similar from one directive to another directive?

<b>A</b>	Yes	Don't know	No	Not applicable
	(3)	(2)	(1)	(0)

**C.7** What is your opinion of the statement "More recent EC internal market technical legislation is simpler than earlier EC internal market technical legislation"? Where would you place yourself on the scale:

<b>E</b>	Strongly		Neither		Strongly
	Agree	Agree	Agree nor	Disagree	Disagree
	(5)	(4)	(3)	(2)	(1)

**C.7.1** Please comment on your answer to C.7

Comments:

## Enforcement

**C.8** What is your opinion of the statement "Within any given Member State there are no variations in installation and use requirements". Where would you place yourself on the scale:

<b>E</b>	Strongly		Neither		Strongly
	Agree	Agree	Agree nor	Disagree	Disagree
	(5)	(4)	(3)	(2)	(1)

**C.9** How often do you have a need to see the enactment of EC internal market technical harmonisation directives in one or more Member States? Where would you place yourself on the scale:

<b>B</b>	Always	Often	No opinion	Rarely	Never
	(5)	(4)	(3)	(2)	(1)

**C.9.1** If the answer to C.9 was greater than (1): Please briefly describe how you obtain copies of Member State enactments of EC internal market technical harmonisation directives.

Comments: Trade associations; MS governments; associated companies; the Commission.

Not applicable (0)

Don't know

No reply

**C.9.2** If C.9.1 has been answered: Are you satisfied with the process that you have described? Where would you place yourself on the scale:

<b>B</b>	Always (5)	Often (4)	No opinion (3)	Rarely (2)	Never (1)	Not applicable (0)
----------	---------------	--------------	-------------------	---------------	--------------	-----------------------

**C.9.3** If the answer to C.9.2 was less than (5): Please outline what you would see as a satisfactory alternative process.

Comments:

All enactments of all directives available in all official languages from Commission.

All enactments of all directives available in EN, FR & DE as for CEN.

As above available via internet.

References available via internet.

Don't know.

No reply

**C.10** What is your opinion of the statement "Enforcement regimes, for any given EC internal market technical harmonisation directive, are the same in all Member States"? Where would you place yourself on the scale:

<b>E</b>	Strongly		Neither		Strongly
	Agree	Agree	Agree nor	Disagree	Disagree
	(5)	(4)	Disagree	(2)	(1)
			(3)		

Comments:

No comment ☐

Differing requirements for conformity attestation - (cat2/3 etc in ATEX).

Complaint driven or proactive enforcement.

Level penalties for infringement.

**C.11** For any given EC internal market technical harmonisation directive, how do you learn about the enforcement regime in any given Member State?

Comments:

Rely on trade association briefings.

Make direct enquiry of MS government.

Read MS enactment.

EIC/Chamber of Trade.

Associated companies.

Ad hoc.

**C.12** If the answer to C.10 was greater than (2): What is your opinion of the statement "Differences, real and/or perceived, in enforcement regimes for any given EC internal market technical harmonisation directive give cause for concern"? Where would you place yourself on the scale:

<b>E</b>	Strongly		Neither		Strongly	
	Agree	Agree	Agree nor	Disagree	Disagree	Not
	(5)	(4)	Disagree	(2)	(1)	Applicable
			(3)			(0)



**C.13** Have you ever contacted the Commission directly for information on enforcement regimes of EC internal market technical harmonisation directives in Member States other than your own?

**A**      Yes    (3)      No opinion    (2)    Go to C.14      No    (1)    Go to C.14

**C.13.1** If the answer to C.13 was 'Yes': Please comment on the Commission's response to your enquiry.

Comments:

**C.14** Is there any additional data concerning your perception of the internal market or your opinion about enforcement regimes across the Member States of the European Community that you consider should be taken into account in this research?

**A**      Yes    (3)      No opinion    (2)    Go to D.1      No    (1)    Go to D.1

**C.14.1** What is the additional data?

Not applicable.

## Part D: To explore the respondent's understanding of harmonised standards.

**D.1** What is your opinion of the statement "All relevant standards are of value". Where would you place yourself on the scale:

<b>E</b>	Strongly		Neither		Strongly
	Agree	Agree	Agree nor	Disagree	Disagree
	(5)	(4)	Disagree	(2)	(1)

**D.1.1** What is your opinion of the statement "European standards are of value in relation to internal market new approach technical harmonization directives"? Where would you place yourself on the scale:

<b>E</b>	Strongly		Neither		Strongly
	Agree	Agree	Agree nor	Disagree	Disagree
	(5)	(4)	Disagree	(2)	(1)

**D.1.2** Please comment on your answer to D.1

Comment:

**D.2** Within the European Union the term 'harmonized standard' has a particular meaning – 'harmonized standards' have a special status. How would you rate your knowledge of this status? Where would you place yourself on the scale:

<b>G</b>			Neither		
	Full	Partial	Knowledge	Mainly	Complete
	Knowledge	Knowledge	Nor Ignorance	Ignorance	Ignorance
	(5)	(4)	(3)	(2)	(1)

**D.2.1** If the answer to D.2 was greater than (1) please briefly describe this status:

Comments: Provide a presumption of conformity

Judgement  
Self OVER assessment = '1'  
Otherwise = '0'

**D.3** How would you rate your knowledge of which standards bodies are authorised to prepare 'harmonized standards'? Where would you place yourself on the scale:

<b>G</b>			Neither Knowledge Nor Ignorance		
	Full Knowledge (5)	Partial Knowledge (4)	(3)	Mainly Ignorance (2)	Complete Ignorance (1)

**D.4** If the answer to D.3 Was greater than (1): Please identify those standards bodies that are authorised to prepare 'harmonized standards':

**D.4** Not applicable (0)

**D.4.1** CEN (1) **D.4.3** ETSI (1)

**D.4.2** Cenelec (1) **D.4.4** No opinion (1) **D.4.5** Number Correct ( )

**D.5** How would you rate your knowledge of how the standards bodies that are authorised to prepare 'harmonized standards' get their authority to do this work? Where would you place yourself on the scale:

<b>G</b>			Neither Knowledge Nor Ignorance		
	Full Knowledge (5)	Partial Knowledge (4)	(3)	Mainly Ignorance (2)	Complete Ignorance (1)

**D.5.1** If the answer to D.5 was greater than (1): Please identify where the standards bodies that are authorised to prepare 'harmonized standards' get this authority:

**D.5.2** Comments: Directive 98/34/EC (83/189/EEC) or possibly individual directives (MID).

Judgement  
Self OVER assessment = '1'  
Otherwise = '0'

**D.6** Do you purchase all European standards that are relevant to your work?

<b>B</b>	Always	Often	No opinion	Rarely	Never
	(5)	(4)	(3)	(2)	(1)

**D.7** Do you use all European standards that are relevant to your work?

<b>B</b>	Always	Often	No opinion	Rarely	Never
	(5)	(4)	(3)	(2)	(1)

**D.8** Where relevant non-mandatory 'harmonized standards' are available do you use them?

<b>B</b>	Always (5)	Often (4)	No opinion (3)	Rarely (2)	Never (1)
----------	---------------	--------------	-------------------	---------------	--------------

**D.9** Does your organisation respond to relevant drafts that are issued for public comment from the European and National standards bodies?

<b>B</b>	Always (5)	Often (4)	No opinion (3)	Rarely (2)	Never (1)
----------	---------------	--------------	-------------------	---------------	--------------

**D.10** How would you rate your knowledge of the process by which a European standard can attain the special status of 'harmonized standard'? Where would you place yourself on the scale:

<b>G</b>	Full Knowledge (5)	Partial Knowledge (4)	Neither Knowledge Nor Ignorance (3)	Mainly Ignorance (2)	Complete Ignorance (1)
----------	--------------------------	-----------------------------	---	----------------------------	------------------------------

**D.10.1** If the answer to D.10 was greater than (1): Please briefly describe your understanding of the process.

**D.10.2** Comments:

Mandate  
Prepare standard  
Approval within Commission  
Publish nationally  
Publish reference to standard in OJ

Judgement  
Self OVER assessment = '1'  
Otherwise = '0'

**D.11** Is there any additional data about harmonised standards that you consider should be taken into account in this research?

<b>A</b>	Yes (3)	No opinion (2) Go to E.1	No (1) Go to E.1
----------	---------	--------------------------	------------------

**D.11.1** What is the additional data?

Not applicable.

## Part E: Suggestions for improvements to the processes

**E.1** In addition to the points discussed earlier, can you suggest anything that you think would improve the overall EC internal market technical legislative process?

**A**

Yes (3)      No opinion (2) Go to E.2      No (1) Go to E.2

**E.1.1** If the answer to E.1 was 'Yes': Please outline the suggestion(s).

Comments:

Remember technical legislative change in EC means all the way down to Member State implementations.

**E.2** What would your opinion be if all users of EC internal market technical legislation (Enforcers, manufacturers, consumer groups etc) were to be given active roles in the technical legislative change process? Where would you place yourself on the scale:

**F**

Strongly  
Support  
(5)

Support  
(4)

Neither  
Support nor  
Oppose  
(3)

Oppose  
(2)

Strongly  
Oppose  
(1)

**E.2.1** Briefly describe perceived advantages/disadvantages of such involvement:

Comments:

**E.3** Do you understand the difference between EC directives and EC regulations?

**A**

Yes (3)    Don't know (2) Go to E.4    No (1) Go to E.4

**E.3.1** If the answer to E.3 was 'Yes' please briefly explain the difference between directives and regulations.

**E.3.2** Comments:

Judgement  
Self OVER assessment = '1'  
Otherwise = '0'

**E.4** If the answer to E.3 was 'Yes': What is your opinion of the statement "The objectives of the EC internal market would be achieved more completely if the technical harmonisation was in the form of EC regulations instead of EC directives". Where would you place yourself on the scale:

**E**

Strongly Agree (5)	Agree (4)	Neither Agree nor Disagree (3)	Disagree (2)	Strongly Disagree (1)	Not Applicable (0)
--------------------------	--------------	---	-----------------	-----------------------------	--------------------------

**E.5** Do you have any suggestions as to how enforcement information on EC internal market technical harmonisation directives in other Member States could be made more generally available?

**A**

Yes (3)    No opinion (2) Go to F.1    No (1) Go to F.1

**E.5.1** If the answer to E.5 was 'Yes': Please elaborate the suggestion(s).

Comments: Not applicable ☐    No reply ☐

***This final part of the Structured Interview is not critical to the main thrust of the research but will provide much useful supplementary information to support the main research if you can spare the time for its completion.***

## **Part F: Miscellaneous**

**F.1** Is your organisation a member of any trade association(s)?

<b>A</b>		Yes	Don't know	No	Not applicable
		(3)	(2)	(1)	(0)
<b>F.1.1</b>	National	(3)	(2)	(1)	(0)
<b>F.1.2</b>	European	(3)	(2)	(1)	(0)
<b>F.1.3</b>	International	(3)	(2)	(1)	(0)

**F.1.4** For 'Yes' answers to F.1.1 and/or F.1.2 and/or F.1.3 please provide details.

Comments:

**F.2** Do you know of any websites that provide access to information from, and about, the European Union institutions?

<b>A</b>	Yes (3)	Don't know (2) Go to F.3	No (1) Go to F.3
----------	---------	--------------------------	------------------

**F.2.1** If the answer to F.2 was 'Yes': What website addresses do you know that provide access to information from, and about, the European Union institutions via the internet?

Comments:

europa.eu.int – OJs  
 europarl.eu.int  
 curia.eu.int – Commission  
 ue.eu.int - Council

## Job specification and procedures.

**F.3** Is there a clear, written job specification for your job function?

**A** Yes (3) Don't know (2) Go to F.4 No (1) Go to F.4

**F.3.1** If the answer to F.3 was 'Yes': Do you have a copy of the written job specification?

**A** Yes (3) Don't know (2) No (1) Not applicable (0)

**F.4** Are there any written process descriptions for your job, possibly included in some form of quality manual, that must be followed?

**A** Yes (3) No opinion (2) Go to F.5 No (1) Go to F.5

**F.4.1** If the answer to F.4 was 'Yes': Do you have ready access to a copy?

**A** Yes (3) Don't know (2) No (1) Not applicable (0)

**F.4.2** If the answer to F.4 was 'Yes': Do you have your own copy?

**A** Yes (3) Don't know (2) No (1) Not applicable (0)

**F.5** Does your organisation have any general policy statements, other than any 'mission statement', to which you must adhere?

**A** Yes (3) Don't know (2) Go to F.6 No (1) Go to F.6

**F.5.1** If the answer to F.5 was 'Yes': Do you have copies of any general policy statements, other than any 'mission statement', to which you must adhere?

**A** Yes (3) Don't know (2) No (1) Not applicable (0)

**F.5.2** If the answer to F.5 was 'Yes' please outline these statements.

Comments: Code of conduct ☐ Ethics policy ☐ No reply ☐



**F.6** It is likely that your work is governed, to some extent at least, by internally or externally produced written regulations, policy statements, processes or procedures. If a new written regulation, policy statement, process or procedure is produced, or an existing one is modified, how would you become aware of it?

Comment:

UK government administrative procedures.

Treaties – Amsterdam?

EC Regulation, directive or decision.

From ISO 9000 audits.

No reply.

## Quality management systems

**F.7** Does any part of your organisation have ISO 9000 Series Quality Management System accreditation?

**A**

Yes (3) Don't know (2) No (1)

**F.7.1** Does **your** department have its **own** ISO 9000 Series Quality Management System accreditation?

**A**

Yes (3) Don't know (2) Go to F.7.2 No (1) Go to F.7.2

Not applicable (0)

**F.7.1.1** If the answer to F.7.1 was 'Yes': Which ISO 9000 Series Quality Management System accreditation does your department have?

Not applicable (0) ISO 9001 (1) ISO 9002 (2) ISO 9003 (3) Don't know (4)

**F.7.2** Does the wider organisation of which you are part have ISO 9000 Series Quality Management System accreditation that encompasses your department?

**A**

Yes (3) Don't know (2) Go to F.7.3 No (1) Go to F.7.3

Not applicable (0)

**F.7.2.1** If the answer to F.7.2 was 'Yes': Which ISO 9000 Series Quality Management System accreditation does your wider organisation have?

Not applicable (0)   ISO 9001 (1)   ISO 9002 (2)   ISO 9003 (3)   Don't Know (4)

**F.7.3** If either your department and/or the wider organisation encompassing your department have ISO 9000 series Quality Management System accreditation, do you know why the accreditation was obtained?

**A**

Yes (3)   No opinion (2) Go to F.7.4   No (1) Go to F.7.4

Not applicable (0)

**F.7.3.1** If the answer to F.7.3 was 'Yes': Please explain the reason(s).

Comments: No reply ☐

**F.7.4** Design Control!

**Either** – if there **is** ISO 9001 accreditation applicable to the respondent's department:

**F.7.4.1** As your department is covered by an ISO 9001 accreditation then what does your Quality Manual say about clause 4.4 Design Control?

**Or** – if there is **no** ISO 9000 series accreditation applicable to the respondent's department:

**F.7.4.2** As your department is not covered by an ISO 9001 accreditation then how do you ensure that you keep abreast of the statutory rules governing your work?

**Comments:** F.7.4.1 or F.7.4.2  
Do you think your system really works?

**F.7.5** If there is ISO 9000 Series accreditation:

**F.7.5.1** How would **you** describe the value of the ISO 9000 series accreditation to your department? Where would you place yourself on the scale:

<b>F</b>		Strongly Support	Support	Neither Support nor Oppose	Oppose	Strongly Oppose
Not applicable (0)	(1)	(2)	(3)	(4)	(5)	

**F.7.5.2** How would **you** describe the value of the ISO 9000 series accreditation to the wider organisation? Where would you place yourself on the scale:

<b>F</b>		Strongly Support	Support	Neither Support nor Oppose	Oppose	Strongly Oppose
Not applicable (0)	(1)	(2)	(3)	(4)	(5)	

Comments:

**F.8** Does your organisation carry out benchmarking studies?

<b>A</b>	Yes (3)	No opinion (2)	Go to F.9	No (1)	Go to F.9
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**F.8.1** Can you describe the outcomes and/or benefits of these benchmarking studies?

Not applicable.

**F.9** Is there any additional data that you consider should be taken into account in this research?

**A**

Yes (3)      No opinion (2) Go to F.10      No (1) Go to F.10

**F.9.1** What is the additional data?

Not applicable.

**F.10** Who else do you think I should interview for this research?

Comments:

**F.11** Do you have any questions related to this interview?

**Additional notes:**

**THANKS**

## APPENDIX III

### The Introductory Letter

**T.C.Rogers**

*'Brereton', Lower Marine Parade, Dovercourt, Harwich, Essex CO12 3SR  
phone/fax 01255 - 508 054 e-mail terry.froghoppers@Btopenworld.com*

My Ref: Intro-letter

Your Ref:

Dear

I am a research student at Middlesex University Business School undertaking research related to European Community internal market technical legislation. This research has been divided into two sections: a literature review and practical research that requires the gathering of information from persons closely involved with EC internal market technical legislation.

This Structured Interview is part of the information gathering process. The individual responses to the questions will remain confidential to me and to my research supervisors but they will be used in conjunction with the responses from other interviewees to help generate an overall picture. Excerpts from this interview may be made part of the final research report, but under no circumstances will your name or any identifying characteristics be included in the report.

Participation is entirely voluntary. You are free to refuse to answer any question and you are free to withdraw at any time. At any time during or after the interview you retain the right to retrospectively withdraw and for your data to be destroyed. At the end of the interview, if there are any questions that you would like to discuss further please identify them.

A number of the questions in this interview require you to make a choice out of several options for your response. The different formats for these options are set out in the attachment to this introductory letter, it would be helpful if you had this attachment to hand as we go through the interview.

Yours sincerely

T.C.Rogers

## Attachment to Introductory Letter.

STYLE	FORMAT				
<b>A</b>	<div>Yes</div> <div>No opinion or Don't know</div> <div>No</div>				
<b>B</b>	Always	Often	No opinion	Rarely	Never
<b>C</b>	Very Pleased	Pleased	Neither Pleased nor Displeased	Displeased	Very Displeased
<b>D</b>	Very Helpful	Helpful	Neither Helpful nor Unhelpful	Unhelpful	Very Unhelpful
<b>E</b>	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
<b>F</b>	Strongly Support	Support	Neither Support nor Oppose	Oppose	Strongly Oppose
<b>G</b>	Full Knowledge	Partial Knowledge	Neither Knowledge Nor Ignorance	Mainly Ignorance	Complete Ignorance
<b>H</b>	All barriers removed	Most barriers removed	No opinion	Some barriers removed	No barriers removed



## APPENDIX IV

EC Training Document

## TRAINING IN LEGAL DRAFTING

At the Commission it was decided that the training in legal drafting called for by the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation would be given by the Commission's Legal Revisers themselves. The Council is taking a similar approach, while the European Parliament relies on external experts for its training.

A number of the Commission's Legal Revisers have been given courses in training techniques. They have now started giving the actual drafting training.

In the first instance the Legal Revisers are giving introductory courses largely centred around the Joint Practical Guide. The immediate aims are to:

- explain the background to the concern for the quality of drafting which led to the Interinstitutional Agreement;
- introduce drafters to all the different rules and principles applying to the drafting of Community legislation and explain how they interrelate;
- consider the effects of multilingualism;
- examine the structure of a typical act, identify the specific rules applying to each part of an act and see how those parts fit together;
- consider other drafting topics of concern to each group of trainees.

The courses are, in the first instance, being given to the Directorate Generals and the Services which are most often involved in the legislative process. They will then be offered to other departments.

As the next stage it is planned to offer more advanced courses focussing on the actual texts produced by the departments.

The materials issued to participants in the courses are chiefly the Interinstitutional Agreement and the Joint Practical Guide themselves.

Trainees are also given a list of the various rules applying and the sources of guidance, a copy of which is annexed.

**Annex****RULES ON DRAFTING****1. Interinstitutional rules**

**Declaration No 39 on the quality of the drafting of Community legislation**, adopted by the Amsterdam Conference in 1997 (OJ C 340, 10.11.1997, p.139)

**Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation** (OJ C 73, 17.3.1999, p.1)

**Joint Practical Guide**

(Signed on 16 March 2000) Accessible from Europateam or from: <http://www.cc.cec/sj/>

**2. Commission rules and guidance**

**Home page of the Commission's legal revisers:**

<http://www.cc.cec/sj/jurrev/homejren.htm>

**Rules on legislative drafting** (RTL), 1997 edition (new edition in preparation):

<http://www.cc.cec/sj/jurrev/en/index.htm>

**Rules of Procedure of the Commission**

(OJ L 308, 8.12.2000, p.26)

**Guide to the implementation of directives based on the new approach and the global approach, European Commission**

On-line version: <http://europa.eu.int/comm./enterprise/newapproach/legislation.htm>

**3. Council rules and guidance**

**Rules of Procedure of the Council**

(OJ L 149, 23.6.2000, p.21)

**Manual of precedents, drawn up by the Legal/linguistic experts of the Council**

(2001 version)

**Member States' Initiatives, Guidelines of the Council Legal Service**

(September 2000)

**4. Other guidance**

**Interinstitutional style guide, 1997 edition**

In particular for guidance for style and presentation:

[http://www.europateam.cc.cec/eur-op/code/en/en\\_c.htm](http://www.europateam.cc.cec/eur-op/code/en/en_c.htm)

**Style guides issued by the Commission's Translation Service**

**The Guide to Better European Regulation, Cabinet Office of the United Kingdom**

[http://www.cabinet-](http://www.cabinet-office.gov.uk/regulation/Europe/The%20Guide%20To%20Better%20Regulation.pdf)

[office.gov.uk/regulation/Europe/The%20Guide%20To%20Better%20Regulation.pdf](http://www.cabinet-office.gov.uk/regulation/Europe/The%20Guide%20To%20Better%20Regulation.pdf)

## APPENDIX V

Decision letter from European Ombudsman

## THE EUROPEAN OMBUDSMAN

JACOB  
SODERMN

Strasbourg 07-06-2001

Mr T. C. ROGERS 'Brereton'  
Lower Marine Parade Dovercourt  
UK - Harwich Essex C012 3 SR**Decision on complaint 708/2000/(IJH)BB against the European Commission**

Dear Mr Rogers,

On 1 June 2000, you made a complaint to the European Ombudsman concerning alleged failure by the European Commission to publish the list of all committees which assist the Commission in the exercise of its implementing powers, as required by Council Decision 1999/468/EC<sup>1</sup>.

On 18 July 2000, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 26 October 2000 and I forwarded it to you with an invitation to make observations, which you sent on 19 November 2000.

I am writing now to let you know the results of the inquiries that have been made.

**THE COMPLAINT**

The complainant complains that the Commission has not yet published the list of all committees which assist the Commission in the exercise of its implementing power (i.e. comitology committees), as required by Council Decision 1999/468/EC. The list should have been published by January 2000.

<sup>1</sup> OJ L 184, 17/07/1999 p. 23-26.

The European Ombudsman

avenue du President Robert Schuman F-67001 S rRASB() ( iZC; CC Tel. +3 - ".(())s58 17.2 s.13 - Fax. +?  
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## THE INQUIRY

### The Commission's opinion

The Commission in its opinion made the following points:

As regards the background, Article 7(4) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission states that, « *The Commission shall, within six months of the date on which this Decision takes effect, publish in the Official Journal of the European Communities, a list of all committees which assist the Commission in the exercise of implementing powers. This list shall specify, in relation to each committee, the basic instrument(s) under which the committee is established* »). Article 10 states that the Decision will take effect « *on the day following that of its publication in the Official Journal of the European Communities* ». It was published on 17 July 1999.

The list in question was actually published in Official Journal No C 225 of 8 August 2000.

The Commission wished to point out that it is always especially anxious to implement legislation scrupulously and correctly, particularly in view of the role conferred on it under the Treaty. It was also concerned to ensure as much transparency as possible. In this respect it should be pointed out that, over and above the obligations laid down in the Decision, the list published in the Official Journal indicated the applicable committee procedures and the publication references of the instruments in question.

As the case involved implementing a provision in a legislative instrument, the Commission was in fact faced with a complex task, which it finally succeeded in accomplishing.

Many reasons can be given for the delay; the Commission merely wished to stress three points:

The scope of the task encompassed several thousand legislative instruments adopted over a period of decades; furthermore, those instruments relate to different responsibilities assigned to various committees under legislation that has been adopted and amended throughout the history of the European Communities;

In particular, the exercise involved, first, distinguishing - from among the many tasks assigned to each of the committees - those tasks which came under the implementing powers conferred by the legislator on the Commission (the object of the Council Decision) from those which did not; and, second, settling a number of questions of legal interpretation which arose as a result;

Last but not least, it is worth bearing in mind the circumstances in which the work was carried out, i.e. departmental reorganisation following the change of Commission and the reforms requested by the European Parliament, which naturally led to coordination problems between the various departments concerned.

## The complainant's observations

The complainant maintained his complaint and stated that he found the Commission's opinion totally unacceptable. The complainant made, in summary, the following points:

Council Decision 1999/468/EC sets out a timetable for action by the Commission. It was regrettable that the Commission failed to admit, up front and quite straightforwardly, that it had failed to meet the deadline for publication.

The complainant noted the phrase « *...especially anxious to implement legislation scrupulously and correctly...* ». According to the complainant there is no doubt that when applied to others, i.e. the Member States, the above phrase would be interpreted by the Commission as including implementation within the prescribed timescale. The inference here was that the timescale set by Council for the Commission did not apply. The complainant was not able to see any justified reason why this should be the case.

The complainant found it impossible to believe that Council Decisions such as 1999/468/EC are adopted without the involvement and agreement of the Commission. If this was indeed the case then the Commission was guilty of one or the other, or possibly both, of the following:

- a) failure to recognise the magnitude of the task that it was being given and to assign sufficient resources to ensure completion on time ;
- b) failure to manage the task effectively to a successful and timely completion.

According to the complainant, the Commission appeared to be saying that requirements to comply with the law are, for an indeterminate period, not applicable to any organisation that is subject to a re-organisation when that re-organisation was the result of a recent senior management change or the result of an imposition from outside the organisation.

The Commission has the responsibility, under Treaty of Amsterdam Article 211, to « *ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied* ».

The complainant was of the view that those responsible within the Commission for the failure to comply with Council Decision 1999/468/EC should be identified and held to account.

## THE DECISION

- 1 **Alleged failure to publish the list of all comitology committees, as required by Council Decision 1999/468/EC**
  - 1.1 The complainant alleges failure by the European Commission to publish the list of all committees, which assist the Commission in the exercise of its implementing powers, as required by Council Decision 1999/468/EC.
  - 1.2 Article 7(4) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission provides that « *The Commission shall, within six months of the date on which this Decision takes effect, publish in the Official Journal of the European Communities, a list of all committees which assist the Commission in the exercise of implementing powers. This list shall specify, in relation to each committee, the basic instrument(s) under which the committee is established* »). Article 10 provides that the Decision will take effect « *on the day following that of its publication in the Official Journal of the European Communities* ».
  - 1.3 The Ombudsman notes that Council Decision 1999/468/EC was published on 17 July 1999 and took effect on 18 July 1999 and, therefore, the list of all comitology committees should have been published by January 2000.
  - 1.4 The Commission in its opinion stated that the above mentioned list was published in Official Journal No C 225 of 8 August 2000.
  - 1.5 The Commission gives in its opinion three particular reasons explaining the delay in publishing the above-mentioned list. Firstly, the scope of the task encompassed several thousand legislative instruments adopted over a period of decades. Secondly, the exercise involved, distinguishing those tasks which came under the implementing powers conferred by the legislator on the Commission from those which did not and settling a number of questions of legal interpretation which arose as a result. Thirdly, the circumstances in which the work was carried out, i.e. departmental reorganisation following the change of Commission and the reforms requested by the European Parliament, which naturally led to coordination problems between the various departments concerned.
  - 1.6 The Ombudsman concludes that based on Article 7 (4) of Council Decision 1999/468/EC the Commission had a legal obligation to publish the list of all comitology committees by January 2000. The Commission published the abovementioned list only on 8 August 2000 with a delay of over six months. By not publishing the list of all comitology committees as required by Council Decision 1999/468/EC, the Commission has failed to act in accordance with a rule which is binding upon it. Therefore, the Ombudsman finds an instance of maladministration by the Commission.



- 1.7 The above mentioned failure is binding upon the Commission as an institution. The legal obligation is an obligation of the European Commission. The European Ombudsman does not find it justified seeking to identify or to hold to account possible individuals.

## 2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

The Ombudsman concludes that based on Article 7 (4) of Council Decision 1999/468/EC the Commission had a legal obligation to publish the list of all comitology committees by January 2000. The Commission published the above-mentioned list only on 8 August 2000 with a delay of over six months. By not publishing the list of all comitology committees as required by Council Decision 1999/468/EC, the Commission has failed to act in accordance with a rule which is binding upon it. Therefore, the Ombudsman finds an instance of maladministration by the Commission.

Given that this aspect of the case concerns procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

The President of the Commission will also be informed of this decision.

Yours sincerely,

Jacob SODERMAN

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